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THE DIPLOMATIC QUARTER IN PEKING

ITS JURISTIC NATURE

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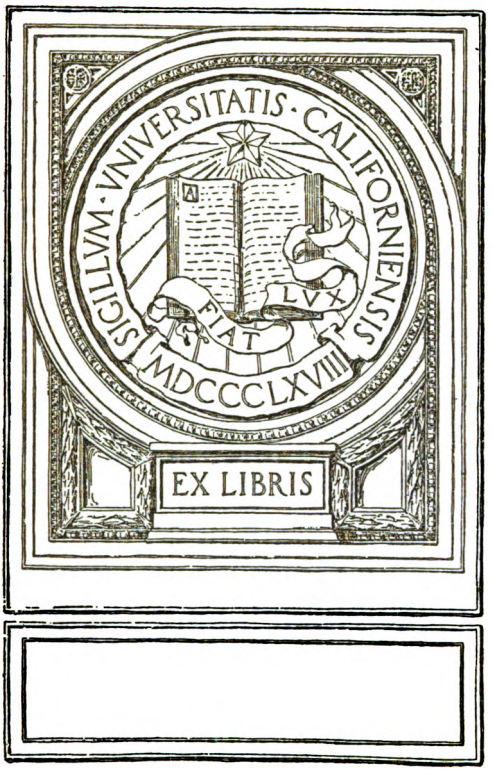

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THE DIPLOMATIC QUARTER IN PEKING

ITS JURISTIC NATURE

by

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This book was printed ready for publication when on April 6, 1927, in open day and in presence of a large public an armed Chinese force entered the Diplomatic Quarter and invaded the Embassy of the Union of S.S.R. where freely and at leisure it ransacked a great part of the Embassy.

From the moment of this brutal violation of the *Franchise de l'hôtel d'Ambassade* and open, cynical disregard of a fundamental principle of International Law, obviously begins a new period in the History of the Diplomatic Quarter in Peking.

Naturally, the present edition of the book written and practically published before these later events does not contain anything relating to the new period.

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Introductory Observations.

1. When in the month of September, 1924, we moved our residence into the compound of the former Russian Legation now the Embassy of the Union of Soviet Socialist Republics, located in the Diplomatic Quarter, and did this after successfully overcoming a number of obstacles put in our way by "benevolent" foreign governments and their representatives in Peking, —we discovered in the archives of the Russian ex-Legation among other documents the "Protocols of the Meetings of the Diplomatic Body" in Peking (*Procès - Verbaux des Séances du Corps Diplomatique*) for the period from 1900 to 1920 (or to be more correct—from October 26, 1900, to May 21, 1920.*

These protocols, which therefore cover almost a complete score of years and generally reflect everything that happened at the 219 meetings, with all their

* It is known that in 1920,—indeed at a later date on September 23rd, a Decree of the President of the Republic of China was issued to the effect that the Chinese Government withdrew the recognition of the Russian Minister and Consuls in China, and subsequently to this the last Russian Minister PRINCE KUDASHEFF departed from Peking.

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written supplements and annexes, are such a rich source of information and so characteristic and colourful as the reflection of a period of time equally interesting and important for the history of China as for her relations with the Western Powers, that it would seem not an exaggeration to say that a new and rather valuable "source of knowledge" of International Law has revealed itself to us in these "Protocols,"—a source of materials which unfortunately have never been published before and therefore remained little known.

It appears that each Legation was allowed a certain number of printed copies of each protocol, either kept there on file, or sometimes sent to the respective foreign offices. The protocols were treated as "manuscripts" and did not become available either to the public at large or to scientific circles, not being offered for sale or otherwise.*

Under such circumstances the reader will not object, I trust, if I add a few preliminary remarks referring to our subject.

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*As to the period preceding the so-called "Final Protocol" (vid. below) a slight mention of them is made by SIR ERNEST SATOW in his well known work—"A Guide to Diplomatic Practice," 2nd Edition, 1922, vol. II, page 162, etc. SIR ERNEST SATOW was himself a member of the Peking Conference of 1900-1901 in the capacity of British Minister to China. He remarks that "Very full *procès-verbaux* were drawn up. . . ." and further "The *procès-verbaux* have not been published."

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2. The whole complex of the protocols represents one finished volume (entitled "Chinese Affairs. — The Peking Negotiations, 1900 to 1902"), to which are added a number of additional separate leaves which have not been bound into a volume.*

On its side the first volume consists of the following three parts (*parties*): 1) protocols from the beginning and until the one of September 6, 1901, when the "Final" meeting (No. 65) was held (the protocol of this meeting known as the Final Protocol, *Protocole final,* was signed on the following day, i. e September 7, 1901). The pages number 274 in-quarto are typed in small print; 2) the "annexes" to these protocols—they are 200 in all—upon 211 pages. Several of them are not in French but in English; and 3) the protocols of the meetings "following upon the signing of the Final Protocol, until the one of June 28, 1902," pages—LXII. (The Indexes have another 14 pages and thus the total is 562 pages).

The remaining documents supplementing the above mentioned volume consist, as I already mentioned, of a considerable number of loose leaves of the same size and print. Their total exceeds by 50% the size

*The only complete collection in our archives was bound in three volumes. But this was done arbitrarily and at random, without any serious foundation.

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of the first volume. The pagination is often interrupted in an inconsequent manner, either (but this not always) when going over to a following year, or even within one and the same year.

It should be noted that the Diplomatic Body did not meet between August 6, 1914 (the 133rd meeting after the Final Protocol) and August 23, 1917 (134th meeting). It is quite clear why it did not meet during this period. For had it been otherwise, then in the days of the Great War the Allies would have had to sit together with Germans and Austro-Hungarians, and this neither side could or would have done. Only upon China's declaration of war against the Central Empires and when the German and Austrian Ministers had left not only the precincts of the Diplomatic Quarter but even Chinese soil, did the meetings of the Diplomatic Body again become possible and were again resumed.

From time to time the closer circle of "Representatives of the Powers signers of the Final Protocol"* held meetings in lieu of the Diplomatic Body. (We would like to point out *en passant* that in China there is more than one group of diplomatic agents of foreign States. To understand this it will suffice to remember another division of the diplomatic

* Such, for instance, was the attendance at the meetings held on the 13th June and 14th December, 1904.

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representatives—into representatives of "Treaty" and "non-Treaty" Powers).

The Final Protocol was signed by the following States (placed alphabetically according to their names in French): Germany, Austria-Hungary, Belgium, Spain, United States of America, France, Great Britain, Italy, Japan, Netherlands and Russia on the one hand and China on the other. The place of Russia is now held by the U.S.S.R. while Germany and Austria-Hungary do no come any more into consideration on the strength of the Treaties of Versailles (Art. 128) and Saint-Germain (Art. 113). Therefore at the present time there are nine "co-signatories" to the Final Protocol, out of those who have contracted with China.

3. I mentioned already that the contents of our protocols are the most varied. Indeed, we find here very different topics dealt with.

To say nothing of all the matters forming the contents of the Final Protocol, all sorts of financial subjects are discussed here, beginning with stamp dues and ending with questions of currency circulation, monetary crises and so forth. Further on, quite a number of questions dealing with commerce, navigation and ports were profusely treated in the protocols. A most important part of the protocols deals with the question of concessions and settlements in China,

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particularly with its renowned Mixed Court. The Ministers of the Powers gave particular attention to the jurisdiction of the latter. Nor did they adopt an indifferent attitude towards the "Shen-pan-tin" (ordinary Chinese Courts) inasmuch as any foreigner took part in their proceedings. Owing to this fact, the so-called "mixed tribunals" were created. The question of corporal punishment also came up. The "Ministers Plenipotentiary" did not pass by with indifference the complex of rights and privileges of the diplomatic and consular staffs in China, which were especially dear to their hearts. Outside of purely juristic matters, the plague in Manchuria and North China in 1911 as well as a great many other topics attracted their attention. Very impressive and colourful particulars are given about the comparatively recent Chinese Revolution of 1911 : proclamations and documents regarding the abdication of the Emperor, a picture of the state of Peking, the popular mood there and so forth.

4. Among the subjects of such great variety which make the protocols such a checkered reading, an important, if not paramount, part is played by the most conspicuous question, that of the so-called Diplomatic Quarter of the Legations in the capital of China, which really is a creation of diplomats, called into being by the Final Protocol of 1901 and subsequently by the Protocol of June 13, 1904.

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The following lines will endeavour to help toward an elucidation of the juristic nature of the Diplomatic Quarter. Though many of the other subjects just cited by me are not less tempting, still for the time being I shall not touch them. Let them form the subject of special articles, it being quite irrelevant whether they will be mine or written by other authors.

The present article is devoted exclusively to the Diplomatic Quarter at Peking principally for the reason that as a matter of fact very little is known about it, at least so far as regards actual and not fantastic information. There exists no monographic literature dealing with the Quarter. The treatises and textbooks on International Law contain but very little information on this subject, sometimes overlooking it altogether or mentioning it only casually.*

It is true that in special treatises devoted to *extraterritoriality in China,* the Diplomatic Quarter

*This may be proven by the following: let us take, for instance, four contemporary courses or manuals of International Law which are considered of the best. I refer to the voluminous works of Oppenheim (British), Hyde (American), Liszt (German), and Fauchille (French).

Now what do we find in respect to our subject? As a matter of fact very little indeed.

Oppenheim ("International Law." A Treatise, 3rd edition, I—II 1920/21), though he speaks of the Boxer Rising and its suppression, observes a profound silence on the subject of the Diplomatic Quarter.

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is *mentioned* or *dealt with more extensively*. We bear in mind mainly the works of Wellington Koo, Baudez,

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Hyde ("International Law," I—II, 1922) makes only the following observation: The "Boxer" troubles, says the author (I, page 131), "deprived China of a number of rather important rights. Thus she was obliged to yield the special reservation of the so-called Legation Quarter in Peking, together with the exclusive control thereof, embracing the fullest right of defense, to the interested Powers. Art. VII" (Final Protocol of Sept. 7, 1901).

Liszt (even in the posthumous 12th edition of 1925 profusely supplemented by Fleischmann) is not very communicative either. "The Legation Quarter in Peking holds a special position on the strength of the Final Protocol of September 7, 1901. It is placed under the extraterritorial administration of the Diplomatic Body. Vid. also Art. 130 of the Treaty of Versailles (par. 2)" (page 201). (Compare also the Russian edition (4th) of the same book, revised by Prof. Hrabar in 1917, page 156, and the 5th considerably changed edition of 1926, page 104).

Even the big work of Fauchille "Traité de droit international public" I, part 3 (1926), in which part we find the rights of Legations dealt with, nevertheless does not mention the Diplomatic Quarter in Peking at all. (Compare the "Manuel" of Bonfils-Fauchille 5th ed., 1908, No. 143[16].)

This is all. Turning to other works we find:

In the well known course of Moore ("A Digest of International Law," 1906, 8 (sic) volumes), much space is devoted to the Boxer Rising and its consequences (V, pag. 476—533), but the attention of the reader is scarcely if at all attracted to the Diplomatic Quarter.

In Fenwick's "International Law" (1924), one of the most recent American manuals, we do not find a single line on our subject.

The same should be said about the newest 7th edition (1924) of Lawrence's "Principles of International Law," and of the latest 8th edition (1924) of Hall's "Treatise on International Law" (pag. 66, 339, 475) and of many others.

Nevertheless I must make the reservation that the literature I possess here in Peking is far from being complete.

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Tyau, Wagner, Willoughby and Soulié de Morant. Even here we shall only find a few score of lines with the barest outline of *facts*, information principally taken from the Final Protocol of 1901.*

Moreover, if on the one hand the Final Protocol of 1901 is well known in the literature on the respective subject and has been printed with all its 19 Annexes in the compilation of international acts of which the

---

* Wellington Koo: "The status of aliens in China" (edited by the Faculty of Political Science of Columbia University, 1912), pag. 266, etc.; Baudez: "Essai sur la condition juridique des étrangers en Chine" (a Thesis in the University of Paris, 1913), pag. 254, etc.; T. Z. Tyau: "The legal obligations arising out of treaty relations between China and other States" (1917), pag. 27, etc., a Thesis in the University of London, and translated into Russian under the heading "The status of foreigners in China" (Harbin, 1918, pag. 32, etc.); Wilh. Wagner: "Aufenthalt und Niederlassung Fremder in China" ("Schriften des Deutsch-Chinesischen Verbandes" 1918), pag. 73, etc.; Willoughby: "Foreign rights and interests in China" (1920), pag. 219, etc.; Soulié de Morant: "Exterritorialité et intérêts étrangers en Chine" (1925), pag. 278, etc. Not all of these authors, however, even mention the Protocol of 1904 (referred below).

The paragraph from Tyau's book in its greater part is referred to in Hatschek's "Voelkerrecht," 1923, page 93, and from Willoughby's book a few lines have been reprinted in the book of Popoff-Tateva "China. An Economic Description" (Moscow, 1925), page 299.

A few lines are devoted to the Diplomatic Quarter in Dauge's article "De la condition juridique des étrangers en Chine," which was published in the "Journal du Droit International Privé" (Clunet), vol. 32 (1905), page 854.

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collections of treaties with China and regarding China are the best source, on the other hand the Protocol of 1904 is hardly to be found anywhere, though it is a legal source of a special and more or less detailed nature dealing with the Diplomatic Quarter. You will not find the 1904 Protocol in Rockhill's collection "Treaties and Conventions with or concerning China and Korea 1894-1904" (Washington, 1904); in Mayer's collection of "Treaties between the Empire of China and Foreign Powers" (Shanghai, 5th edition, 1906); the two volumes of Hertslet's "China Treaties" (London, 1908); the 2 volumes, "Published by Order of the Inspector General of Customs," entitled "Treaties, Conventions, etc., between China and Foreign States" (Shanghai, 2nd edition, 1917), nor, for instance, in the "Collection of Treaties and Diplomatic Documents Regarding Far Eastern Affairs, 1895—1905," published in 1906 by the Ministry of Foreign Affairs in St. Petersburg (Leningrad). If one does not count the three printed copies of the Protocol of June 13, 1904, which were given to each Legation in Peking, nor the general "Protocols of the meetings of the Diplomatic Body," which I have mentioned before and to which I am going to refer constantly in the course of this study, then it would seem to me that the Protocol in question is to be found maybe only in MacMurray's Collection of "Treaties and Agreements

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with and concerning China, 1894—1919" (New York, 1921, vol. I, pag. 315 etc.).*

*The translation we find here belongs to the American Legation in Peking, which communicated it to the Department of State in Washington. The same translation has now been printed in a booklet of Charles James Fox, which appeared in 1926 and is entitled "The Protocol of 1901, Charter of Peking's Diplomatocracy," pag. 41, etc). As to the French text of the Protocol of June 13, 1904, it is also given in recent times by Soulié de Morant op. cit. pag. 279, etc.

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I.

Legal Materials.

In the Final Protocol of September 7, 1901, only one of its twelve articles, namely Article VII, refers to our question of the legal status of the Diplomatic Quarter in Peking. This Article reads as follows:

"The Chinese Government has agreed that the quarter occupied by the legations shall be considered as one specially reserved for their use and placed under their exclusive control, in which Chinese shall not have the right to reside* and which may be made defensible.

The limits of this quarter have been fixed as follows on the annexed plan (Annex No. 14):

. . . . . .

. . . . . .

In the protocol annexed to the letter of the 16th of January, 1901, China recognized the right of each

* This prohibition was always understood and applied in a restrictive sense: with the exception of Chinese employed in the Legations as servants and those in general employed by foreigners having the right by law to reside in the Diplomatic Quarter.

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Power to maintain a permanent guard in the said quarter for the defence of its legation."

The extracts we must take from the Protocol of the 13th June, 1904, are more extensive.

Here we read:

Protocol Regarding Legation Quarter at Peking— June 13, 1904.

"The undersigned representatives of the Powers signers of the Final Protocol of the 7th of September, 1901, in view of Article VII of the said Protocol, by which the Chinese Government has admitted that the quarter occupied by the Legations should be considered as a quarter specially reserved for their exclusive police, where Chinese would not have the right to live, and which might be put into a state of defence, and in view of the plan fixing the limits of this quarter in accordance with the Protocol, have agreed on what follows:

1. The possession of the land indicated by having their name inscribed on the map made for that purpose, and annexed to this Protocol, is conceded to each Legation, also to the Imperial Maritime Customs, to each foreign association, and to all private individuals.

2. All land included between the limits of the quarter and the defensive walls marked on the map,

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land which is reserved as a glacis for the defence of the quarter, also the roads, sidewalks, gutters, bridges, drains, trees, and constructions of whatever nature, are conceded to belong to the Diplomatic Quarter as a common possession.

3. Are excepted, parcels of land situated on the glacis, which are conceded to have belonged to private individuals before the 20th ot June, 1900, the date of the beginning of the siege of the Legations, which are also indicated on this map.

These parcels remain the property of their former proprietors, or of those deriving their rights from them.

. . . . . .

. . . . . .

4. No construction, permanent or temporary, with the exception of those now existing, shall be made upon any part whatever of the glacis, without the unanimous consent of the Representatives of the Powers signers of the Final Protocol of the 7th of September, 1901.

5. The glacis being recognized as common property, each Legation is provisionally charged with the control of that part of which it has at present assumed the defence, and the Commandants of the Guards shall be invited to consult together on all matters relating to its military organization.

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6. The Legations, the Imperial Customs, associations, and private individuals, shall not make any encroachment on the glacis, the roads, sidewalks, bridges, or canals, as they are indicated on the map.

7. The Representatives of the Powers signers of the Final Protocol of September 7th, 1901, agree to proceed forthwith to the drawing up of a plan of general Government of the police and control of the roads, and to submit this to the approbation of their respective Governments. Moreover they shall take such steps as they shall deem advisable to obtain the necessary authority to enforce these regulations upon their nationals, and to oblige them to pay the taxes intended to insure the service of the police and the maintenance of the roads."*

*Articles 8 and 9 (as well as the second half of Art. 3) are of no interest for us. Article 10, the last one, is already known to us. It provides that three copies of the Protocol should be printed for each of the Legations concerned.

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II.

Some Legal Principles from the Viewpoint of the Diplomatic Body.

Such is the positive and legal material, such are the rules which are to govern the existence of the Diplomatic Quarter: the symbiosis of its residents and, especially, its external relations—to the rest of Peking, to China and her Government.

We shall now turn to this existence. But before doing so let us pay attention to another matter.

Not all the above cited legal principles met with equal sympathy on the part of representatives of the contracting parties (to say nothing of China).

Thus on the one side the principle that each Legation should have the *right* to keep its own guard did not cause any doubt and was accepted unanimously. This question was never understood as involving an *obligation* for any foreign Legation located in the Diplomatic Quarter. Therefore, as a matter of fact, such a permanent guard was maintained only by the so-called

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European "Great Powers," and by Japan and the United States of America. The total number of such guards was fixed at 2,000 men (with the advice of Field-Marshal COUNT WALDERSEE), of whom each of the above mentioned Legations kept from 150 (the U. S. A.) to 300 (France, Germany, Japan, and Russia).*

* Ref. to meetings of November 13, December 20 and 24, 1900, January 2, 1901, and Annexes Nos. 37 and 101, vol. I, part 2, pag. 28, etc., and 106.

By the way, we would like to mention here (though it takes us far ahead) the following incident which is not devoid of interest.

On December 12, 1913, the Russian Representative (KRUPENSKY) made an extraordinary declaration to the Diplomatic Body to the following effect: that the Russian Government, considering that a normal state of affairs had been restored at Peking and that the Chinese Government had already disposed of a sufficient number of troops to protect Russian nationals, their lives and property, decided to recall its troops stationed in North China. There would be left only a Legation Guard of from 30 to 40 men at Peking and of 10 men to guard the Consulate at Tientsin. KRUPENSKY added that his Government would, however, find it desirable that other foreign Powers proceeded likewise. Therefore in the interest of a common and joint step to be taken it would wait with the putting into effect of its decision for a certain sufficient period of time. The foreign Governments, however, did not communicate their consent to the inquiries of their Ministers, and on February 17, 1914, KRUPENSKY advised his "esteemed colleagues" that the Russian detachment would be withdrawn from Peking on March 17 of the same year.

Vid. also the meeting of March 17, 1914, as well as "An American Diplomat in China 1913-1919, by P. S. REINSCH, American Minister to China," 1922, pag. 77, etc., and note how great were the astonishment and the dismay not only of the Diplomatic Body, but of foreign correspondents in Peking as well when they heard of KRUPENSKY'S declaration.

The 30—40 men mentioned above of the Russian Legation Guard left the Peking Legation in the beginning of 1918 after the October Revolution.

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In the same way there were no objections to another principle. This was the principle that each Legation possessed an independent right of ownership to the lot of land assigned to it, as well as to anything located upon the same. All this is the property of the Legation concerned and exclusively its property. There is no co-ownership here at all. In this respect, everybody is of one and the same opinion. Of this among others the following deduction is made—viz. that each Legation is complete master within its compound.*

On the other hand we meet with a completely different attitude towards another fundamental principle of the legal status of the Diplomatic Quarter in Peking. I am now referring to the juristic nature of the *glacis* and the common ownership established in respect of the same.

It should be noted that such a structure and understanding were for the first time clearly defined in the above quoted 2nd Article (comp. Art. 5) of the Protocol of 1904. Until this time the juristic nature of the glacis was more than disputable. The views of the Diplomatic Body in its respect are very divergent,

* This deduction is particularly emphasized by SIR ERNEST SATOW. "If (he says) I had a free lot of land and desired to cede it to a baker or butcher (speaking of Chinese), I would not feel obliged to demand the permission of my colleagues, but even not consider necessary to advise them of this at all." (March 22, 1901.)

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vague and unstable. Even time fails to improve and clear up this imbroglio. Should one compare, for instance, the meeting of January 12, 1904, with the one of December 21, 1901, it will be noted immediately that the former is by far no better than the latter. The diplomats themselves acknowledge quite frankly that neither the history of the case, nor any other circumstances ever disclosed to them with a sufficient clarity the real legal substance of the glacis.

In the end, however, as we have already mentioned, they were inclined to favour a co-ownership of the glacis. But their sympathy, or the sympathy of at least a great part of them, is against such a qualification. Several amongst them wished that another situation should be created in the same manner as the one governing the lots of land which were occupied by the Legations proper, or in other words that ownership pure and simple be recognized to the glacis as well,—this to be an independent ownership as against the common ownership or co-ownership of all the Legations. They would like to look upon the section of the glacis adjoinining the compound of the Legation concerned as upon their property. They would have laid down voluntarily their viewpoint to this effect in the decisive Protocol. On the contrary, a "condominium" did not suit them at all, depriving them as it did of a number of privileges, restricting or

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inconveniencing them in their freedom of action and right of disposition.

At the just above quoted meeting in the beginning of the year 1904 the Belgian representative (JOOSTENS) insisted upon his standpoint in spite of all discussions and arguments. "Nevertheless,"—so he retorted to his colleagues,—"and in any case my Government will insist upon retaining the right of using the lot of land it occupies on the glacis and will do this as long as such an occupation is necessary." Such a statement is certainly a most characteristic and excellent illustration of the viewpoint we have just outlined. In the course of this study we shall have the opportunity to establish that subsequently the same viewpoint leads to very realistic consequences.

The Italian Minister scarcely differed in his opinion from his Belgian colleague. He found it equally difficult to agree that the case was one of common property. Recognizing that the glacis was to serve the defence of the entire Quarter, he was prepared to understand the necessity of certain restrictions. But, he says—the right of ownership exists exclusively in favour of the Legation concerned and should not be lost owing to the above consideration. The construction is a different one from co-ownership, because we are faced by nothing else but a kind of servitude, which for the time being does indeed restrict the right

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of the owner, without, however, changing his legal qualification as the subject of proprietary rights. Because, should the necessity of defending the Diplomatic Quarter cease, the general purpose would cease as well, and the right of ownership would be restored in its normal unrestricted form.* Should we, on the contrary, adopt the viewpoint of a common ownership to the glacis, then in the future if for one reason or another the land of the whole glacis is sold, including the Italian section of the same, the purchasing price would become common property as well. COUNT GALLINA would never consent to this.

How difficult it was for the diplomat just named to discern the difference of rights to the land covered by the Legation compound and the land of the glacis adjoining the Legation may be observed most conspicuously from the following incident, which is not devoid of interest.

Among other territory seized by foreign troops and authorities they also occupied a certain Peking square, on which there stood an ancient Chinese

* In a general way this is how the legal status is also construed by the Belgian Minister for Foreign Affairs in his instruction issued on January 20, 1902, to the Belgian Chargé d'Affaires. Ref. also to the written report of the German Minister (BARON MUMM), representing a resumé of the endless discussions on the subject of the glacis, which was read at the same meeting (of January 12, 1904).

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temple and mausoleum named Tang-tze. The Chinese held this place in very high esteem, particularly as the Emperor was wont to make his prayers there. This is the reason why they were most eager in petitioning for a restoration of this land to them. The other side, however, refused to satisfy their request on account of considerations connected with the defence of the Diplomatic Quarter, alleging that for the purpose of defence a part at least of the land lot concerned should be turned over to the land reserve of the glacis. The Dean of the Diplomatic Body (the Austro-Hungarian Minister BARON CZIKANN VON WAHLBORN) gave a corresponding reply to the Chinese, saying that if the Emperor was really so keen to get back his temple there would certainly be no objections, but it should be taken into consideration that any time the Emperor might desire to come to the temple he would previously have to apply for permission to cross the glacis. The Chinese on their part would not agree to this, and in the end the whole plot of land was "ceded" by them.

All this is excellent. Now, as it would seem that a *certain* part of the land seized was to be turned over for the defence of the Diplomatic Quarter (without which, as the Dean himself pointed out, the Chinese would never have agreed to cede it), it could in no wise be considered as being the sole property of the Italian Legation. Yet, as a matter of fact, it is just this

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lot to which Italy presents her claim on the same basis as she claims the other parts of the "Italian" glacis and everything else that belongs to the Italian Legation.

Certainly, a great many things remain here unsaid and rather obscure and the "dots have not been put over the i's." The diplomats seem to experience a certain feeling of awkwardness or uneasiness. Nevertheless, this does not induce them to turn down the claim of the Italian Minister. In order to justify himself COUNT GALLINA makes an avowal, which is not flattering either to him or his colleagues. He says: it should be remembered that lots of land on which the Legations stand are also nothing else but the product of occupation effected "in an equally arbitrary manner." Each Legation has only maintained what it had taken by force, and kept it on the strength of a *fait accompli* and not owing to "a genuine understanding between all the Legations, which would have formed the only rightful basis for the allotment of lands in the Quarter. . ."

At the same meeting of January 12, 1904, SIR ERNEST SATOW tried to bring to reason and reduce the excessive appetites of certain of his colleagues in respect of the glacis. He rebuked them by saying that the present area occupied by the Legations was *ten times* larger than the one they possessed before 1900, and therefore there really should be no impression of being cramped.

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All the above is quite sufficient to form a more or less complete picture.*

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* Ref. to pag. XCIX to CVI of the protocol of the quoted meeting. See SIR ERNEST SATOW'S letter in Annex No. 25, vol. I, part 2, page 17, also the table in Annex No. 53, ibidem, pag. 50. See also H. B. Morse's "The international relations of the Chinese Empire," III (1918), page 355, etc., where there are more particulars on this subject as, for instance, that Germany had increased the area of her Legation compound from 2½ to 25½ acres, Italy from 1 to 10 acres, and Japan from 1 to 14½ acres, and so forth.

In connection with this the author does not repress his harsh opinion. He says: "The Legation Quarter may be considered as the provision of a defensible fortress in the heart of the capital of a hostile Power,—for which purpose it was much too large; or as the happy grasping of the opportunity to provide spacious quarters for the diplomatic representatives of the Powers, in park-like surroundings, free from the old-time insanitary conditions, and at the cost of China,—and in that case it was not justified."

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III.

The Glacis.

Let us now turn our attention to the *actual life and practice* such as they formed themselves within the limits of the Diplomatic Quarter, judging by the protocols of the meetings of the Diplomatic Body.

Let us begin again with the glacis.

Unfortunately we have to remark that this day-to-day practice was marked neither by lawfulness and beauty, nor by firmness and permanency.

We shall cite a few examples to this effect.

The glacis, or to be more correct, certain parts of it are being leased out for the most varied purposes.

For instance such leases have been made out to passing *circuses*. However, in one case such a lease is granted and in another refused.*

It was much more important and advantageous to lease lots on the glacis to *hotels, bars* and other

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*August 2, 1911.

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more permanent establishments. But it is indeed unfortunate that such establishments are liable to degenerate into a kind of . . . houses of ill fame. They are most frequented by the soldiers of the Legation Guards and suspicious Chinese vagrants and women of ill repute, *des filles de mauvaise vie.* The result is, as states the Dean of the Diplomatic Body himself,* "noise, disorder, indescribable scenes in the middle of the streets,"—in other words, "a scandalous state of affairs," honourable citizens lodging many complaints against it.

This, however, is not all. These establishments (in one case a regular licensed brothel—*maison de prostitution*) are even building *walls* upon the glacis, whereby they surround themselves to avoid immodest gazing. It is true that no permits are given for this, but no protests are lodged either by anybody.**

It seems as if it were worth while to look into this matter of the erection of walls.

To the astonishment of everybody it appears that a regular permit is being issued for such constructions. It is true that such permits are issued not to holders

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* SIR JOHN JORDAN, who was British Minister to China for 14 years—until 1920, at the meeting of July 6, 1912. He died recently in London. Vid. also the meeting of May 14, 1913.

** July 2, 1913.

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of brothels, but to honourable citizens. Nevertheless, an obvious violation of the Protocol of the 13th June, 1904, has undoubtedly been thereby committed. And this for the reason that it has been proven that such permits were issued not at all with the authority (or even the knowledge) of all the "Representatives of the Powers signers of the Final Potocol of September 7, 1901," which was prescribed categorically by Art. 4 of the Protocol of the 13th June, 1904, but at the personal order of the head of the Legation concerned. Here we meet with the reflection of the theory already mentioned that the glacis enters into the indivisable property of the adjoining Legation. It is known that any violation of law represents an inclined plane. And after such an eminent example by the head of the Legation permits for the erection of walls are issued by more obscure, or to be more correct, even more than obscure human beings—simply by a Member of the Administrative Commission of the Section concerned, Lieutenant so and so. All this according to the acknowledgement of the Diplomatic Body itself is an undoubted violation of the law. However, as the Diplomatic Body is not in a position to react in any more or less effective way, the walls erected by both honourable citizens and less honourable ones continue to stand and remain upon the glacis of the Quarter.*

* May 29 and July 2, 1913.

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What we have mentioned refers to the year 1913. It is very characteristic all by itself. Still, if we glance back to the year 1910, the whole matter will become much more conspicuous.

If the reader reviews the period from 1910 to 1913 and moreover the entire time between 1904 and 1913, he cannot but be struck by the frequent fluctuations and changes admitted in the practice of the Diplomatic Quarter. No trace can be found of any definite, consequent and principal plan in spite of all the affirmations to this effect to the contrary.

It is not very rare to meet here with the following: viz. that the Diplomatic Body had just changed its practice, when at its nearest meeting it does revert to its ancient practice only to discard it subsequently for the new one, etc.

As a matter of fact we have already more than once depicted the position as it was in 1904, namely that the erection of walls and buildings in general was prohibited. Nevertheless, all such structures were being erected without heeding this prohibition in the slightest degree. And they were being erected notwithstanding the fact that permission of all the co-signatories to the Protocol of 1901, as provided by the Protocol of June 13, 1904, has never once been obtained,* as already

*) Vid. May 21, 1910.

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mentioned by me. Such a situation lasted for a rather long while until finally people became more reasonable and reached a decision in this matter (on November 5, 1910). But what kind of a decision was this? It was as follows: to confirm the prohibition regarding the erection of walls with the penalty of demolition; all the walls, however, which had already been constructed, even though their construction had been effected after the year 1904, were to be allowed to remain. As a matter of fact, everybody will see that this decision represented a very serious concession.

Turning to subsequent events we shall observe that even after 1910 walls continued to be erected with the same painstaking labour as before. The foreigners admitted to the use of the glacis not only failed to execute the payments they had undertaken in respect of the Diplomatic Body, but just as previously they utterly disregarded the prohibition to build walls in spite of the prohibition and the threat of demolition having been confirmed.

The authorities of the Diplomatic Body continued to look upon this with equanimity and passiveness. A new period of time elapsed. Yet, everything is bound to come to an end. Accordingly in 1913 at the meeting held on May 29, to which we already referred, the Diplomatic Body decided that owing to repeated violations in the future "all the walls erected upon

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the Northern glacis after November 5, 1910, should be pulled down within a period of two months."

But what do we see? At the following meeting (held on the 6th June, 1913), only a week after the last mentioned ruling to have the walls pulled down was passed, the Dean of the Diplomatic Body (the Japanese Minister HIKOKICHI IJUIN) reported to the meeting that certain interested persons had applied to him with the request that the walls should not be demolished, offering a certain monetary compensation for that. The Austrian Minister (ROSTHORN) immediately proposed to defer the execution of the resolution adopted on the 29th May, and his Italian colleague (COUNT SFORZA) seconded him out of material considerations. The Belgian Minister (CARTIER DE MARCHIENNE) was the only one who lodged a protest. He reproached the Body for having changed its viewpoint in the few days which had elapsed. What was the reason for the changed viewpoint? Certainly, if matters were going to continue as they were, then the Diplomatic Body would soon lose its entire authority. But this rebuke failed to produce any effect, and at the following meeting of the Diplomatic Body on the 2nd July, the Belgian diplomatist himself approved a proposition of a purely formal nature, whereby the Diplomatic Body in its dispute with the usurpers of rights on the glacis, gave up its position as a matter of fact and definitely

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changed its front. Supplementing this, somebody proposed that on the whole length of the glacis surveying posts with the inscription *"C. D." (Corps Diplomatique)* should be placed, so that the promenading public should realize that the right of ownership to the entire territory of the glacis belonged to the Diplomatic Body. This "radical" proposition did not meet any objections, and accordingly the whole problem was settled, — not excepting, as one should think, the problem of observing the Protocol of 1904, with its 4th article, as well as supplementary regulations in respect of the erection of buildings, the pulling down of walls, etc.! Everybody breathed in relief and the Dean expressed himself as pleased (*se félicite*) on account of such a fortunate satisfaction "of all (sic) the interests involved."

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IV.

Practice Concerning Various Other Matters.

One cannot but agree that the position of the Diplomatic Body as based upon the Protocols of 1901 (Art. VII) and 1904, and further upon the Statutes for the Diplomatic Quarter in Peking as established in execution of the Protocol of 1904 (Art. 7), was not an easy one. Without any exaggeration one may say that a great many of the provisions of these acts were quite impossible to fulfil and in a number of such cases the Diplomatic Body was and now is absolutely *helpless.*

It is quite obvious that the only reasonable and honourable way out of this position would be an open and sincere surrender of the respective "rights and privileges," if not in toto, then at least in part. Instead of this the Diplomatic Body, however, gets the more obstinate, tries to retain verbally at least and outwardly the position held, or to be more correct, declared, and consequently the results could bring, and actually did bring, nothing good, but contradictions,

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faithlessness, Canossa — even the latter being insincere and only affected.

We wish to prove the above assertion and would therefore quote the following facts and examples.

It once happened that a certain Chinese officer was not admitted into the Diplomatic Quarter. In retaliation he abused an agent of the police. The Minister for War acting through the Wai-wu-pu sent a letter of reproof to the Diplomatic Body, requesting it to cancel that article of the Statutes which prohibited Chinese military from entering the Quarter even unarmed, unless they produced in every case a special permit.

At the meeting of the Diplomatic Body* one of its members — the French Chargé d'Affaires (GEORGES-PICOT) demanded that a firm and unyielding attitude should be observed in the application of the existing rules. He argued that for a certain time the Chinese were striving to recover the rights they had lost in consequence of the events of 1900. An end should be put to this. Otherwise serious difficulties would occur. Particularly, once Chinese military were admitted, it would become impossible to maintain peace and order in the Quarter.

But the majority did not share this opinion and so, "without raising the question of principles" and

* August 2, 1911.

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in order to give an answer of a general nature, a resolution was adopted declaring that a "mistake" (!) had occurred, because the Police Regulations could not be applied (?) to this particular case of which the Chinese General was writing.

The reply is pitiful and useless for the reason that the Chinese themselves knew the Police Regulations as well as the Diplomatic Body did, and must have realized that just in the present incident the corresponding Article of these Regulations had certainly been applied correctly. It is not astonishing therefore that the matter did not rest with this.

Indeed, at the following meeting* the Dean reported that the Ministry of Foreign Affairs had not been satisfied with the reply received, and that in the present communication of the Ministry it insisted upon a modification of the "inadmissible" Regulations; secondly, that the question of freedom of movement of Chinese within the limits of the Diplomatic Quarter had excited both the Ministry, which had already managed to send three notes on this subject, and the press; and lastly, that the Chinese authorities were attaching to this question a great deal of attention and, consequently in, order to avoid unpleasantness the matter should be settled, the quicker, the better.

* September 9, 1911.

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After a certain sweet-and-sour exchange of views the Diplomatic Body resolved to send a new note to the Wai-wu-pu, in which it declared that "the Police Regulations in force in the Diplomatic Quarter in no way (*en aucune façon*) prohibited the admittance of Chinese officers even when they wear uniform and are armed, and that instructions to this effect were being given to the agents of the Police."

But on another question, which was discussed at the same meeting regarding the non-admittance of Chinese carts, the Diplomatic Body tried strongly and resolutely to maintain its face and its rights.* Unfortunately, the endeavours of the diplomats in this respect were also doomed to failure. Again they had to give in and to do this at the very next meeting.**

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* Here it would be necessary to give certain historical information. In November, 1909, an agreement was entered into with the Chinese authorities regarding the freedom of movement within the Diplomatic Quarter of all kinds of Chinese carts and vehicles This was to be effective for one year. The Chinese were to pay for this privilege M$ 5,000 to cover additional expenses for the repair of streets in the Quarter arising from the increase of traffic and damage to the pavement.

As a matter of fact, this expenses amounted not to M$ 5,000 but at least to M$ 15,000. After having been effective during a certain period, the agreement was denounced and became ineffective. Vid. meeting of the 5th July, 1911, and also May 27, 1911. Therefore at the abovė mentioned moment in our text Chinese carts were indeed prohibited from entering the Diplomatic Quarter.

** October 2, 1911.

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It should be noted that the Ministry for Foreign Affairs would not let the matter stand as it was. Its President, the PRINCE K'ING, wrote an energetic letter (in English), in which it was pointed out that there was no legal reason to prohibit the carts and horses from entering into the Diplomatic Quarter, and that if the Diplomatic Body insisted upon this ruling there would arise an "unfair discrimination" as compared to the practice in other parts of Peking, where the rules of driving were quite the same for Chinese and foreigners.

Once more the diplomats had to weigh all the "pros and cons" of the case. On the one hand it seemed commendable to spare the self-respect of the Chinese and show them that the Diplomatic Body had peaceful intentions. This was the advice of the Dutch Minister (BEELAERTS VAN BLOKLAND). But on the other hand, how was it possible to modify within the course of not quite three weeks its decision, which had been brought to the knowledge of the Wai-wu-pu,—a decision which had only just been taken at the preceding meeting? This was the dilemma that puzzled the Spanish Minister (PASTOR).

Our acquaintance, COUNT SFORZA, finds a way out of this problem and his suggestion is accepted by all the other members of the Body. He said that it was necessary "whilst maintaining in principle its decision

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to tell the Wai-wu-pu in its answer that the Diplomatic Body had agreed to consider the modality of the application (!) of the Regulations," and therefore "if it should be found necessary, questions of a technical nature would be arranged with the assistance of competent Chinese authorities."

This is extraordinarily clear and exact, is it not? The question was about carts. Where can we find here "principles," and where only "modality of application" and "technic"? Where does the one begin and the other end? Truly, this is where language serves to *conceal* the thought.

The theme touched upon by us is really endless, there being so many incidents referring to it. In the long series of protocols we unfailingly meet with the heading *"Circulation* (the French term used) of Chinese within the Diplomatic Quarter."*

* * *

* In addition to the already referred to, vid. e. g. July 6, September 16, October 7, November 19, 1912, and many others. At the meeting of November 3, 1911, it was reported that the Chinese General Yin-tchang had passed through the Diplomatic Quarter with a mounted escort of 50 soldiers, which was considered nothing else but a "provocation" on the part of the Minister for War directed against the Diplomatic Body. Nevertheless, after deliberating, the Diplomatic Body decided not to protest against this "provocation."

At the latest of the above mentioned meetings the following incident, which is not devoid of an element of humour, was taken up.

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It seems peculiar and scarcely believable, but it is still a fact that at times the Diplomatic Body itself *did not wish*,—as a whole incontestably did not wish,—that the rules established for the Diplómatic Quarter should be applied. In certain cases it did not sympathize with their application, but on the contrary, it sympathized with violations of the law and even assisted such trespassers, therefore becoming more or less an accomplice or at least holding the same opinion. It acted however, thus not at all for the reason that it condemned the rule concerned, as one might have expected, but for quite outside reasons.

I think I have the right without violating the truth in the slightest degree to speak thus on the basis of the following duly recorded facts.

Cancelling one of its previous decisions, the Diplomatic Body passed a resolution allowing rickshaws with pneumatic tires to drive through the Diplomatic Quarter, and on the 9th October the Dean advised the Chinese authorities accordingly. However, through oversight of the Secretariate, the Police of the Quarter had not been notified of this resolution. It happened that later, in November, a certain Dr. Chang was not allowed to pass, though the rickshaw in which he was riding had pneumatic tires. Chang was going to the station. Because the Police compelled him to go back, he missing his train. Moreover he was fined 50 cents for his attempt to pass. In the final result there was official correspondence, confusion and a letter of apology to Dr. Chang with enclosure of the 50 cents "collected by error."

More or less similar incidents happened with other Chinese too (Wang Kuang-Ch'i and Chang Ch'ing-Chen: September 16, 1912, etc.).

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Despite such a basic rule as Article VII of the Final Protocol of 1901, Chinese citizens (we are speaking not of domestic servants, etc.) in great numbers resided in the Diplomatic Quarter. They lived not only upon the glacis* but in the very centre of the Quarter. We have in mind the well known "Grand Hôtel des Wagons-Lits" in Peking (for persons not knowing Peking we would explain that it is one of the two best and largest hotels, owned by a foreign trading corporation under the British flag. Besides,—and this is a fact to be duly noted,—it is the only hotel located on the territory of the Diplomatic Quarter).

A state of siege (emergency) had just been declared in Peking. Advising the Diplomatic Body of this declaration, the Ministry for Foreign Affairs requested its assistance regarding several points and among others in respect to Chinese living in the Diplomatic Quarter, who might be accused of conspiring against the security of the State.

At the meeting of July 28, 1913,** the Dean (the same Japanese Minister IJUIN) opened the discussion upon these points.

It was acknowledged by those present that quite a number (*une foule*) of Chinese were living at the

* Vid. again the meeting of May 29, 1913.

** Vid. also November 3, 1911.

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Hôtel des Wagons-Lits, a large number of whom were living there for "political reasons," and that, consequently, this was without doubt an obvious violation of Art. VII of the Protocol of 1901 prohibiting Chinese from living within the Diplomatic Quarter. It was recalled that in 1911 bombs had been discovered in one of the rooms of this hotel. It was said that nobody could guarantee that bombs were not being prepared at the hotel at that very moment or that plots were not being carried on. What was to be done then?

The French Minister (CONTY) called for a strict and precise observation of the Final Protocol and according that the Chinese should be expelled from the hotel. In this respect he even made efforts to convince his colleagues, who were vacillating and offering half-hearted measures. Notwithstanding, here voices made themselves heard in favour of the Chinese guests,—it is true not so much in their favour as in favour of the hotel, or to be more correct, in favour of the shareholders of the company owning the same.

The Secretary of the German Legation (BARON VON RIEDESEL) representing the German Minister who was absent expressed the fear that "an absolute prohibition against Chinese residing in the Diplomatic Quarter, should such a prohibition remain in force without any specified time limit, would very painfully affect the business of the said hotel."

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The Belgian Minister Plenipotentiary (CARTIER DE MARCHIENNE—we know him already), made haste to quiet him, saying: "There is no necessity to observe the practice of prohibiting the matter now before us for a period beyond the circumstances through which this prohibition was called forth. As soon as Peking reverts to normal conditions, there will be no inconvenience to return to the former regime of tolerance."*

The Spanish Minister (PASTOR) even thought that "it is just in this sense that a verbal assurance could be given to the manager of the hotel."

CONTY, however, again demands to be heard and says: "It seems hardly fair to sanction so obviously a simple actual tolerance which is in contradiction to the letter (!) of the Protocol. Undoubtedly the management of the hotel will itself base its attitude again upon the said tolerance as soon as possible." As regards the rest, CONTY thought that a communication to the manager of the hotel "could be worded in such a manner that he would understand well the motives and significance (*la portée*) of the decision taken by the Diplomatic Body."

"*Considering the present circumstances,* the Diplomatic Body draws attention to the necessity of

* The "regime of tolerance" is mentioned more than once still in another connection: vid. e. g. October 23, 1912.

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exactly observing the Protocol of 1901, inasmuch as the same refers to persons having the right to reside in the Diplomatic Quarter... For this reason the Company managing the hotel is requested to give notice to the Chinese *who are living there at the present moment.*"*

The proposal of the French Minister was approved and accepted by the meeting.**a) **b)

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* The italics are certainly mine, as everywhere. In the protocol nothing is outwardly emphasized.

**a) We would like to draw attention to the following *en passant*. It is quite useful to compare the above case of common and joint care in respect to foreign capital invested in China with other incidents, where we meet with *competition* between foreign capital on both sides. In such cases our allied diplomats very easily and rapidly turn into adversaries, each of whom aims at benefit for *his own* national capital, to the detriment of the interests of the other foreign capital. A particularly characteristic meeting of the Diplomatic Body was the one of November 21, 1919, where the Chargés d'Affaires of Belgium and the United States of America were unable to divide between themselves the "skin of the killed bear" —the premises of the German-Asiatic Bank (vid. our chapter VI), which had been closed in connection with the Great War. One of the claimants tried to gain victory over the other by offering to disclose the participation (or the more considerable participation) of Chinese financial capital alongside with purely foreign capital in the competing bank. It is quite clear,—that such Chinese participation is a *drawback* reducing the chances of the bank in obtaining an asylum within the borders of the Diplomatic Quarter. (We shall revert to this case in Chapter VIII).

**b) It is scarcely worth while mentioning that Chinese did indeed more than once subsequently stay at the same Grand Hôtel des Wagons-Lits, which guaranteed and still guarantees to them

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security (refer to our Chapter VII) in the days of the unceasing civil wars and political commotions in China. It really is not worth the while, because in Peking—and not only in Peking—this fact is known by everybody that the Chinese live there *en masse* with the knowledge and tacit approval, or in other words, connivance, of the Diplomatic Body. Several months ago the entire Diplomatic Quarter and especially the above mentioned hotel, presented a rare sight. Under the influence of the happenings in Peking, Chinese Ministers, the Premier, the Chief Executive, dignitaries and wealthy people flocked into the Diplomatic Quarter. They moved there by the tens and hundreds, bringing not only their families but also their money, valuables and to a certain extent, their goods and furniture, etc. This was done in daylight, quite openly, without the slightest indication of effort on the part of the Diplomatic Body or the Administration of the Quarter, to prevent, protest or even reduce the influx. The incident was such that in the local French paper "Le Journal de Pékin" of April 13, 1926, there even appeared a hotly indignant article by the well known Prof. Escarra under the impressive heading: "Réflexions sur la Lâcheté."

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V.

Division *versus* Unity in the Administration.

The difficulties and complications in the life of the Diplomatic Quarter arose also from another rather important source and circumstance.

During a very long time there was no *unity* or indivisibility in the *administration* of the Diplomatic Quarter. In the course of an entire decade (1901—1911) there was never even raised the question of such a unity.*

Three different sections were distinguished: the "Eastern," "Western," and "English."** In each section there was a separate police force sometimes acting independently and not at all in the same way as the police in the other two sections.***

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* The most important exception refers to a comparatively early meeting on January 7, 1903. Subsequently the matter was shelved for one reason or another.

** Vid. e. g. May 27, 1911, or March 6, 1913.

*** Vid. again October 23, 1912. In every section there was a special "Dean" of the Ministers of such Legations as were located in the same (for instance the "Dean of the Ministers of the Western section," etc.) Vid. e. g. the meeting of January 7, 1903.

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In this connection it should be noted that the police of the "Eastern" section had the practice of imposing fines, which the police of the "Western" and "English" sections did not venture to do.*

By the way, in spite of strong and sincerely urged objections by certain members of the Diplomatic Body, in particular the British Minister (SIR JOHN JORDAN) and the American Minister (CALHOUN) against such fines which they considered illegal and not at all lying within the competency of the police of the Diplomatic Quarter, the Diplomatic Body *in corpore* maintained the former practice for the "Eastern" section. Thus lawlessness and lack in uniformity of practice again remained victorious.**

The question of a joint administration for the entire Diplomatic Quarter was proposed seriously for the first time at the meeting of May 27, 1911, and approved. For a long time afterwards the Diplomatic Body nevertheless stayed helplessly and without any success where it was. More than once prolonged debates

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* In the above-mentioned episode with Dr. Chang it was just the police of the "Eastern" sector which was concerned.

** Ref. to the already cited meetings of September 16 and October 23, 1912. It is true that the right to impose fines "within the limits of the law or statutes existing in the different countries" was introduced into the Statute for the (entire) Diplomatic Quarter which is now in force: Annex I, art. 14.

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were held at the meetings* about the advisability of unifying the administration, without any practical result, however. Once the French Minister (DE MARGERIE) observed with bitterness that although over a year had elapsed since the decision had been taken to amalgamate, still everything remained separated as before.**

More months passed by and again the members of the Diplomatic Body were displeased and complained, while certain Governments failed to send the required authorization.*** Only on August 21, 1913, were all the authorizations finally received. There being no more obstacles the diplomats hurriedly decided that the Diplomatic Quarter should be considered as unified and the special Statute governing its administration, which was elaborated in 1912, should be put into effect from January 1, 1914.

In connection herewith we would like to add that in the course of time the Statute of the Diplomatic Quarter has undergone certain changes. Thus, having been enforced since the beginning of 1914, it was "denounced" in the same year. After this there was the usual, cumbersome and protracted process of creating a new Statute. A special commission was

* E. g. November 3, 1911 and February 2, 1912.
** June 11, 1912.
*** Vid. October 23 and November 19, 1912, May 14, 1913.

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appointed to draw up a draft, the latter being considered by the Diplomatic Body — first, by the head of each Legation separately and then by all the heads jointly. Finally, upon having been approved by the local diplomats, the draft was sent to the Governments concerned for their approval as a legal document.*

* Vid. June 12, 1914. In the files of our archives were found three consecutively published printed copies of the Statute of the Diplomatic Quarter, with a French and/or English text. We did not observe any considerable changes in the later editions as compared to the earlier ones.

. By the way, in the majority of cases the Protocol of June 13, 1904, is printed in French or English, together with the Statute. We have to supplement accordingly what we said above in the end of our "Introductory Observations."

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VI.

The Question of Unanimity in the Decisions.

It will be useful to mention another point,—that of the famous "unanimity" as a condition *necessary* for the taking of a decision with legal force.

In the first place, where did this demand come from? From what source was it taken, and why?

It is necessary to emphasize that in the Protocol of 1904 (to say nothing of the Art. VII of the Final Protocol of 1901) this demand was not mentioned as a *general* condition. We find it here only in Art. 4, and, consequently, it refers only to the *question of constructions* on the glacis, even if they are only of a temporary type. In this connection, we would remind the reader that through the irony of fate it is just this erection of constructions and even such capital constructions as walls which was authorised by only one party more than once,—and often done without any permission whatsoever.*

On the contrary, in all other matters where no positive rule ever demanded unanimity, the Diplomatic

* Vid. above our Chapter III.

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Body considered such unanimity as an absolute *condicio sine qua non.*

This is indeed a strange aberration.

It is true that according to Art. 2 of the same Protocol of June 13, 1904, the Diplomatic Quarter also owns "on the principle of common property" the streets, side-walks, bridges, trees, etc., which are within its borders. But does it necessarily follow that the administration should be *unanimous*? Not at all, because common property is by no means always administered under the principle of unanimity.

A rule elaborated in ancient Rome is indeed worded in favour of unanimity, and jurists are certainly well aware of the legal Roman maxim that *In pari causa potior est condicio prohibentis,* which means that of several owners the one wins who disapproves, — i. e. that all owners must agree and that otherwise a legal effect does not and cannot take place. (The famous *liberum veto* was nothing else in substance). There may be no dispute that the position was such for the Roman lawyers, but quite as undoubted is the fact that other lawyers, not Roman, may be of a different opinion on the same subject, and may presume that such a solution of the problem is by no means compulsory nor the only one. Quite to the contrary, there is no doubt that contemporary law maintains that in

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common property it is the principle of *majority* which should dominate. Thus, for instance, is the definite stand taken by the Swiss (United) Civil Code of 1907 (come into force as from 1912), which is rightly considered the best of all Western European Civil Codes.* Without entering into any details, which are irrelevant for our present purpose, we should like to note that the Soviet Civil Codes (e. g. the Civil Code of the R. S. F. S. R.) of 1922 similarly stand upon the solid ground of decisions adopted by a majority of votes of subjects participating in a common property.**

Be as it may our foreign diplomats in Peking have established the practice that a unanimous decision is called for *in all instances.****

But what became of such a practice? And what were its results?

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* Art. 647. "In the absence of a contrary agreement the co-owners administer the property jointly.

As regards ordinary acts of management,..each of them can act by himself unless the majority of them have decided otherwise.

More important matters of administration....require a resolution of the numeral majority of the owners, who at the same time represent the largest part of the property."

(Vid. "The Swiss Civil Code, English Version by Ivy Williams," Oxford, 1925, page 161).

** Art. 62: "The holding, using and disposing of common property should be effected with the common consent of all the participants; and in case of controversy, by a majority of votes."

*** By the way, we would like to observe that the same Diplomats agreed to sanction quite the contrary for the Statute

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Let the facts answer for us. I shall quote several of such facts distributing them in a chronological order. They refer mostly to what we call "most recent history" of the Diplomatic Quarter, which certainly is not an accidental coincidence because the further we are getting away from the years 1901 and 1904, the less we find "companions in agreement."

From the period before the Great War I will quote only a single incident by way of example. This has to do with the matter of fines, of which we have already heard.*

In connection with the incident which I mentioned above the Chinese authorities inquired of the Diplomatic Body regarding the application of fines. The members of this Body, however, as the reader remembers, are by no means of one opinion in the present question,—which is not devoid of importance. They argued for a long time and still could not reach an agreement. Finally, they arrived at the following conclusion: "owing to a difference in opinion it should be recognized that the only way remaining

of the Diplomatic Quarter. The so-called Administrative Commission is taking decisions by a majority of votes, whereby the chairman has a deciding vote in case of an equal division of votes: Art. XI (XIV). In an earlier wording an only exception from this rule was admitted for expenses over the estimates, for which a unanimous decision was demanded (Art. X).

* Vid. above Chapters IV and V.

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would be to give no reply at all to the Chinese declaration regarding the imposition of fines."

This is what one would call a "brilliant decision!"*

Yet, an "ostrich" policy is not always helpful, as it will appear. A little over two weeks later,—i. e. at the nearest meeting,—this odious question again was brought up. The result, obviously, was the same. On repeated and not less animated but quite as useless discussions, the diplomats were convinced of their inability to reach a unanimous opinion. But what did they do? They simply "owing to the late hour deferred the matter to one of the following meetings." In other words, they definitely buried the whole question, merely observing the usual formalities.**

Such is the pre-war picture. It becomes much more hopeless later—in the period of the Great War. A paralysis is getting threateningly ever nearer and this in the most difficult and acute matters.

I shall not weary the reader with a narrative of all the things pertaining hereto but shall concentrate principally upon a more or less detailed *exposé* of a few instances, all more or less important and, as it would seem, instructive. They occurred in the second half of 1917 and in 1918.***

* Vid. again October 7, 1912.

** October 23, 1912.

*** There are a number of lesser incidents. It would suffice to state that even in such an insignificant question as the opening of

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First let us take the year 1917.

The French Minister (CONTY) requested a meeting of the Diplomatic Body so as to establish an understanding upon the legal situation which had just arisen on the parts of the glacis that in times of peace were in charge of Germany and Austria-Hungary, upon whom China had just declared war.*

He, CONTY, professed the following opinion.

On the strength of Art. 5 of the Protocol of June 13, 1904, the entire glacis should be considered common property, and the commandants of the Legation Guards should be called upon to utilize this common property in the military interests, i. e. in respect of military reinforcement and defence of this common property.

But, on the 14th inst., war was declared between the Central Empires and China. What were the consequences?

The consequences were such that the above-mentioned Powers, which were waging war with China, lost

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a part of the glacis for the arrangement of a lawn-tennis court (the part formerly adjoining the German Legation), the diplomatic representatives were unable to arrive at an understanding and the meeting ended without any resolution having been taken. ("In view of the fact that the petition could not be accepted unanimously, the Dean declares the discussions closed"). Vid. March 23, 1920.

* August 23.

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all of their privileges based upon their treaties with China, and, consequently, lost the right of common property to the indivisible plot of land called the glacis. Further, they lost any right to participate directly or indirectly in the fortification and defence of the same glacis. Having lost this right the belligerent Powers were not entitled to turn over this right nor entrust it to anybody else.

"Therefore, a part of the same indivisible land ceases to be administered by anyone in particular and automatically reverts under the joint protection of the present members of the community, the indivisible property of whom this part remains. It is these members who have the right to distribute among themselves forthwith the use and protection of the said plot of land."

Naturally, the measures following therefrom were to be put into practical effect by the commandants of the Legation Guards concerned. The French Minister, however, ventured to recommend to the "benevolent attention of his esteemed colleagues" the desire expressed by the Japanese Minister to the effect that the defence of the part of the glacis which heretofore had been entrusted to the Austrian Guard should henceforward be taken over by Japanese troops. This motion was seconded by all other members of

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the Body and the desire of the Japanese colleague was also granted.

In the end a rather unimportant proposal did not meet with any objections either. This was made by the Japanese Minister (BARON HAYASHI), who did not wish to stay in the background. He moved for the renaming of such of the streets of the Diplomatic Quarter as bore German names. He remarked that "it would be at least strange to maintain religiously the German names for a few of the streets in the Quarter, which were to immortalize the memory of nations actually at war with China."

This motion was carried, it is true, not without any friction and reservations, still in a modified form. It was decided that a corresponding idea should be suggested unofficially to the Administrative Commission, the naming of streets being within its competence.*

Then the third and most important question of the whole group was raised—the question of jurisdiction over Austro-Germans. It was raised at the same meeting by the acting Dean, the Dutch Minister (the same BEELAERTS VAN BLOKLAND), who had been entrusted

* For this reason one of the two principal streets in the Diplomatic Quarter was renamed from "Rue Thomann" into "Rue Marco Polo."

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with the protection of the interests of the nationals of the two Central Empires.

The question raised referred to the International Mixed Court at Shanghai. It was to be decided whether the said nationals could or could not claim any of those privileges which they enjoyed before the war.

The Dutch Minister held firmly that the reply should be in the affirmative. According to his opinion the Austro-Germans had proven beyond doubt that the state of war could have no effect on the general status of foreigners in China. Furthermore, as according to the statutes of the Mixed Court at Shanghai one of the members of the Court should be "either the Consul interested, or the Consul of a friendly Power," it was quite clear that under the given circumstances it would be the Dutch Consul who would have to act. The Dutch Minister concluded by saying that such an interpretation was "beyond any doubt." Nevertheless, he declared, he would be glad to know the opinion of the esteemed members of the meeting on the same subject.

To the regret of the Minister his French colleague hastened to declare his absolute disapproval of the above-outlined opinion. His course of argumentation is known to us in part already. It is analogous with the discussions of the same diplomat on the subject of the glacis.

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CONTY explained that the Austro-Germans, as in a general way any foreigners in China, could base their demands for any rights only upon existing treaties. China, however, he continued, had declared that all treaties entered into with Germany and Austria-Hungary, excepting the Hague Conventions regarding the rights of war, were null and void. It was clear, consequently, that the Austro-Germans had lost the privilege of consular jurisdiction as they had lost all the other privileges, which resulted from treaties. Taking then into consideration the impossibility of delegating the realization of a right already lost, one must necessarily arrive at the conclusion that is was quite impossible to speak of replacing the German or Austro-Hungarian consular jurisdiction with Dutch consular jurisdiction. "In the respect of enemy aliens in China, China recovers fully and automatically the complex of rights and privileges arising out of her sovereignty. Henceforth any Austro-Germans residing in China are subject to territorial jurisdiction. Their status cannot differ from the status of Chinese proper."

But the Dutch Minister would by no means agree to this contention. He considered it impossible to place Austrians and Germans on the same plane with Chinese, and suggested that they be put on an equal footing with foreigners who have not special Treaty

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relations with China, as e. g. the Swiss and Roumanians.*

But here everybody objected—the French Minister, the Russian (PRINCE KUDASHEFF), Italian (BARON ALIOTTI), and Belgian (MAY) all protested that the enemies should not be put upon an equal footing with non-Treaty foreigners.

They attacked the position of their Dutch colleague on the grounds: in the first place, that the regime of capitulations could not be maintained for the belligerent enemy. Secondly, they stated it should not be forgotten that the Chinese Government itself intends to put into effect its newly recovered right—to have jurisdiction over enemy aliens residing in China. A communication to this effect had already been sent in an official note addressed to the heads of the Legations, wherein it was stated that Chinese jurisdiction

*The Swiss have since received these privileges. By the Treaty of "Friendship" entered into with China at Tokyo on June 13, 1918, Switzerland joined the so-called "Treaty Powers," and secured consular jurisdiction for her nationals. (Vid. the attached "Déclaration" in MacMurray's op. cit. II., pag. 1429, etc.

The inquisitive reader may like to know which are the Treaty Powers. These are as follows: Brazil, Denmark, France, Great Britain, Italy, Japan, Mexico, the Netherlands, Norway, Peru, Portugal, Spain, Sweden, Switzerland, and the United States of America (15 in all). The unequal Sino-Belgian Treaty of 1865 (ratifications exchanged October 27, 1866) has been denounced by China a few months ago.

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would be applied for the future to German and Austro-Hungarian subjects.

The acting Dean: "Yes, this is true. I received this note, but it does not affect the proceedings of the Mixed Court in the International Settlement at Shanghai."

BARON ALIOTTI begs "his esteemed colleague" to take into consideration the precedent observed in Turkey where the nationals of foreign countries at war with Turkey are at the present time under the jurisdiction of the Turkish Courts.

The Dean does not see any possibility of drawing a parallel beween China and Turkey in the question of the legal status of foreigners. For him the Austro-Germans in China are still non-Treaty foreigners.

MAY: "But is it at least possible to quote any precedent in favour of such a maxim?"

CONTY: "A fact remains a fact. The Central Empires are at war with China and any belligerent country can never be compared to a neutral. The Statute of the Mixed Court itself was not written for enemy subjects. The rights that we enjoy on the lands of the foreign concessions, which are an integral part of China's territory, never create for us anything else but a delegation of Chinese sovereignty." The Austro-Germans cannot hold any commission nor, consequently,

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any rights from China. Therefore the representative of a neutral Power undertaking the protection of the Austro-Germans can protect only what remained of their assets upon the cancellation of the special treaties. The remainder consists, in addition to the rights arising from the Hague conventions as mentioned, solely of the principles of ordinary humanity inasmuch as such principles are universally recognized.

PRINCE KUDASHEFF draws the attention of the members of the meeting to the consequences, more or less unexpected, that would follow the principle supported by the Dean. On the basis of his conception would it not appear that China was recognizing more rights to enemy subjects than to her own nationals on her own territory?

The acting Dean denies this saying that China would thus recognize not more rights but only just as many rights. As a German or Austro-Hungarian before a Dutch judge, so a Chinese may be convinced that in the person of his Chinese magistrate he would find in the Mixed Court the same guarantees.

The meeting, however, resolutely refuses to agree with this and closes with the declaration of the Dean that the discussions are terminated owing to the impossibility of his to disown his viewpoint and the impossibility at the same time to arrive at unanimity in the discussions.

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Such was this first meeting after a long interval of over three years.

* * *

We shall leave aside the following meeting, which was devoted entirely to the question as to the form of expressing sympathy to the President of the Republic on account of his wife's death, and shall proceed to the next—the third meeting.*

Here again we are confronted with a more than essential difference in opinions. The diplomats again are not united, but seemed to be even in two,—one might say, almost hostile camps. Consequently, the results of the meeting, inasmuch at least as the same refer to the very acute problem in which we are interested, again amounted to zero. The unanimity required was not reached and, accordingly, no decision could be reached either.

The matter discussed this time referred to barracks which before the declaration of war against the Central Empires were occupied by the German and Austro-Hungarian Legation Guards.

The Dutch Minister had now occupied these barracks with his soldiers. In reply to an inquiry made by his French colleague** whether such a step

* October 2, 1917.

** The COMTE DE MARTEL, at the time Chargé d'Affaires. (At the present time he is the French Minister at Peking).

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was lawful, — being as a matter of fact an action of military nature by a neutral country, the Dutch diplomat answered as follows:

"Being called upon to protect the Legations of the said two Powers, I had to take care of the barracks mentioned as well, the same forming part of the immovable property of the Legations concerned. As regards the Chinese Government it should be noted that the same was unable to take the steps required in view of the fact that the property concerned is located within the Diplomatic Quarter. Consequently, there remained nothing else for me to do but to use soldiers of the Netherlands Army who were the only guards at my disposal."

The reply, however, evoked an insistent protest on the part of the representatives of the *Entente*: France in the first place, and subsequently Italy, Belgium and Russia.

They all argued in the manner with which we are already acquainted,—as follows:

The right of each Power to keep its own Guard in the Diplomatic Quarter is based upon the Final Protocol of 1901, and this Protocol, being an agreement between China on the one side and eleven Powers, including the two Central Empires, on the other, has *definitely* and *for ever* ceased to

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exist for the Central Empires upon the declaration of war between China and themselves. There may be no doubt that the privilege mentioned, viz. the one to have its own Guard upon a foreign territory, which is a privilege exceeding the scope of *common* (international) law, will not reappear and cannot reappear *de se* even upon the termination of the war. From this it is clear that the occupation of the German and Austro-Hungarian barracks by a Netherlands military force was directed toward the maintenance of rights which are no more existent, and such an action was consequently inadmissible. Besides, the maintenance of a permanent Guard by the Legations at Peking was called forth exclusively by consideration of affording protection to the diplomatic personnel, whereas at the present moment there was no diplomatic personnel of Germany or Austria-Hungary in Peking.

What is then the conclusion to be drawn from all this?

It is that the esteemed representative of the Netherlands had and continued to have one care only, namely that of protecting the archives and buildings of the Legations concerned. This was all. For this purpose, however, it was quite sufficient simply to put bond seals on the property. The introduction of Dutch soldiers into the premises of the Legations just

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mentioned, even though only done for the sake of their protection, was absolutely inadmissible. Much less was such a protection to be admitted in respect of barracks. In the present case there had been an abuse, a regular abuse already admitted, one directed against the territorial sovereignty of China.*

Finally, at the very most, instead of Dutch soldiers, it would have been possible to despatch to the barracks either the police of the Diplomatic Quarter, or even simple Chinese boys (*de simple boys*).

The Netherlands Minister, on his part, also puts forward certain arguments.

The entire complex of the buildings, so he says, is owned by one or the other of the Legations concerned, and the house for the head of the Legation and the buildings for the Guard protecting the Legation all represents one entity, where one part is nothing but the continuation of another. Correspondingly, all of this is covered by the general and common name of "Legation." It is extremely difficult, not to say impossible, in Peking to make any differences within the borders of the Legation compound,—to separate e. g. the private residence of the Minister

* I find it difficult not to exclaim: how touching is this protection of Chinese sovereignty by the representatives of European "Treaty Powers!"

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from the premises where his staff is working. Now, if this is true, the logical consequence would be an extension to their entire immovable property of the privileges enjoyed in China by the Legations. Consequently, it would be impossible for the Netherlands Minister,—bound to protect the entire German as well as the whole Austro-Hungarian Legation,—to restrict himself to the protection of a part only of the said Legations. Therefore, if it was impossible to argue against the protection through occupation by military force of Legations in the restricted meaning of the word (and according to the opinion of the speaker it was absolutely impossible to so argue), equally no arguments could be raised against the similar occupation of the barracks being a normal continuation of the Legations in the above explained meaning.

The same applies to the staff. The Dutch Minister is not inclined to make any discriminations, and according to his opinion the Legation Guard, or at least in so far as officers are concerned, enjoys the same diplomatic immunity as the Minister himself and the normal staff of the Legation.

Therefore, the Diplomatic Body was confronted by the following question:

"Is immovable property in China allocated for living quarters for the Guard of a Legation anything

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really different from the building of the Legation itself? Are the rights of immunity acknowledged by international practice applicable to such immovable property?"

This was the question on which a poll was taken. As it should be expected, the votes were hopelessly divided. On the one side were Belgium, France, Great Britain, Japan, Portugal, and Russia; on the other, the Netherlands. The remaining members of the meeting abstained from voting for one reason or another.

How should such a vote be interpreted? And did it have any practical results?

An exchange of opinions took place on this subject, too.

The acting Dean (the same Dutch diplomat) said that in order to modify certain steps which had already been practically taken, there should be unanimity, which was not to be found.

The Italian Minister: We are confronted by a vicious circle. *Before* proposing the question whether unanimity was necessary in order to deprive the representative of a neutral country of the right to protect German barracks, it should be established whether or not such unanimity had not been called for previously at the time when the said representative

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was only undertaking the protection of the barracks, which is now being disputed.

In conclusion our diplomats settle the whole affair by deciding that each would inquire of his own Government regarding the barracks, the staff of officers of the Guard and its immunity. Each Government would then give its reply to its Legation, which would, however, only be compulsory or binding upon the Legation concerned.

We shall note down only a few more facts from the minutes of the meeting concerned.

The Belgian Minister was so much afflicted by the whole picture being unfolded before his eyes that he even expressed his affliction. Affliction in respect of what? Well, owing to the absence of any "sanctions" in case of it being impossible to arrive at any decision, when there is no unanimity.

The Spanish Minister (PASTOR) insistently declared that:

"The situation created in China by the force of the Protocol of 1901 is at times so complicated and calls for such a fine juristic interpretation that a detailed discussion in Peking itself at a simple meeting of the Diplomatic Body was impossible. Therefore, it would be necessary to call a special congress for the settlement of the question now before us."

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"It should not be forgotten that in China any problems of International Law acquire an exclusive character. For instance, where else can one find in the whole universe a State in which the Diplomatic Legations were under the protection of their own military guards?"

* * *

In connection with our article another meeting of the Diplomatic Body should be cited. It was held on November 14, 1918, and was wholly devoted to the question, which was correctly defined in the heading of the minutes concerned: "Destruction and pillaging (*sac et pillage*) of German shops as well as the building of the German-Asiatic Bank (*Deutsch-Asiatische Bank*) in the Diplomatic Quarter."

Following the events of the preceding evening, the Dutch Minister, whose duty it was to protect the Austro-German interests, applied to the Dean (SIR JOHN JORDAN) with a letter in which he urgently requested him to convene a meeting of the commandants of the various Legation Guards in order to discuss the means to be taken to prevent any further disturbances. The Minister then continues:

"To my regret I have to state that in spite of the warning which I addressed to the Administrative Commission of the Diplomatic Quarter regarding the imminent danger, the police of the Quarter failed to

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take any steps required to prevent or at least stop the outrage. I recognize that the task of the police was one of the most difficult ones in view of the fact that the culprits were certain of the soldiers belonging to the Guard of certain Legations. These soldiers worked under the eyes of their chiefs and apparently with their approval."

In conclusion the letter expresses the desirability of having the question settled at the earliest opportunity of the establishment of responsibility and compensation of damages to the "victims" who had suffered within the borders of the Diplomatic Quarter.

But the settlement of these questions at a meeting called especially for this purpose did not meet with the approval of the majority of members of the Diplomatic Body.

The new French Minister (BOPPE) directly objected by saying that the responsibility should in the first place be charged to those influences owing to which the Austro-Germans in China had been exempted from the normal action of the war. "Should the enemy subjects only have been interned, as required; had their shops been closed and wound up, which was also necessary. . . , — then public feeling would not have reached such a state of exasperation which made unavoidable the events that happened as soon as the

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news of the armistice dictated to Germany had become known."

In his reply the representative of Holland hastened to express his doubt whether public opinion had indeed played such an important part in the incident. He remarked not without irony that it would be difficult to believe that the ideas put forward at the meeting would be quite up to the mental development of the Annamite soldiers, who had committed the outrages.

Seconded by the Danish Minister (COUNT PREBEN AHLEFELDT LAURVIG) he drew attention to a number of aggravating circumstances. Among the victims there was a poor man who had lost his little remaining property. The pillage had been more or less systematic, and the effects stolen had been sold on the spot —in the street.

All this failed to meet with any response.

BOPPE: "The one right maintained in favour of the Germans here in China is the right to be interned. It was quite unnecessary for them to be in the Diplomatic Quarter, where their presence itself and their open shops were a direct provocation for universal commotion on account of the news regarding the armistice."

The Dean took the side of his French colleague. He explained that it was quite just that the German

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traders should not have been within the Diplomatic Quarter. If they were there, they could not anyhow enjoy any guarantees within the borders of the Diplomatic Quarter. Should the question of rights be raised at all, due record should be taken of the fact that excepting the banks which had settled there before the Final Protocol of 1901, not a single commercial institution possesses any genuine right to open in the Diplomatic Quarter. Therefore, as their presence was only suffered, any foreign merchants in the Quarter mentioned should assume the entire risk connected with their precarious position.

The Spanish Minister believed that in view of the disagreement of the majority with the starting of any investigation, there remained nothing else but to put the whole matter off until the convening of the Peace Conference would be called. This was urged all the more as the whole question did indeed refer to an incident during the war. While a state of war still continues, an armistice does not represent peace.

BARON HAYASHI remarked philosophically: It was impossible not to realize that at one and the same hour similar incidents had occurred all over the rest of the globe.

The Belgian Minister quoted an incident, which formed a precedent suitable according to his opinion.

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Even before the break of diplomatic relations between China and Germany anti-German demonstrations took place at Peking, which were also accompanied by certain damages to property. At that time nobody claimed any damages, not even the then German Minister.

Being finally overwhelmed, the Dutch Minister declared that he was prepared to be satisfied even by a preliminary arrangement, provided that the heads of the Legations present expressed their official acknowledgement—it might be even in principle only—of the right to compensation which belonged to the Germans who had suffered from the events of November 13.

In this question again the foreign diplomats, every one for reasons of their own, refused the protector of German interests. After this the Dean proclaimed that "The meeting is sufficiently convinced of the uselessness of continuing any further debates."

So the meeting closed.

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VII.

Right of Asylum.

Let us now consider the question of the *right of asylum* in the Diplomatic Quarter.

The Diplomatic Body in Peking invariably claimed this right and enforced it time and again. Our Protocols are very clear in this respect and do not leave room for any doubt.

The protocol of November 8, 1917,* is particularly eloquent in this respect. The entire meeting was devoted solely to the right of refuge, the question having arisen in this fashion.

A certain Chinese General, Chang-Hsiun, with his former Chief of staff, Wang Sheng-Shi, had already been in hiding for five months in the Diplomatic Quarter, the former in the Netherlands Legation and the latter in the French Legation.

The Chinese Government requested the expulsion of both. Chang-Hsiun's stay at Peking had doubtless created trouble for the Government. The latter even

*Vid. also the Protocol of November 3, 1911, already quoted.

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offered to give guarantees for the personal inviolability of the General. Nevertheless, the Netherlands Minister (BEELAERTS VAN BLOKLAND, of whom we have heard previously) would not agree even to request his protégé to leave the Diplomatic Quarter. The Chinese Government then appealed to the Diplomatic Body. In its written application the Waichiaopu, evidently annoyed by this refusal, even goes in certain places beyond the limits of refined courtesy. Naturally the diplomats did not close their eyes to this lack of courtesy. Moreover they criticized other separate passages in the note received by the Dean.

Should one, however, put aside not only the above-mentioned, but a great many other unessential things,—and, amidst others, certain misunderstandings and disagreements among the Ministers themselves, then the following conclusion may be drawn from this meeting.

The Ministers acknowledge that it would be an unfriendly act towards China to keep in the Diplomatic Quarter the "mutineer Chang-Hsiun" (who was besides "an ordinary bandit chief, from whom all the Legations have suffered"), and therefore they decide to remove him. But how to put this into effect? And how arrange it in such a way that the exile be not imperiled by any danger and, as far as

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possible, that he remain at liberty, and his position be no more precarious than that of such "sowers of unrest and bomb makers," —and even at times simple criminals,—as are seeking refuge in the foreign concessions at Shanghai and other places and actually find such asylum there, afterwards quietly leaving by sea for some place abroad?* Finally, the honour of the Netherlands Legation must not suffer even in the remotest sense.

After a number of discussions (e. g. as to the place where the subject should be deported — to Shanghai or Tientsin), the Ministers decide upon a plan, which, it is true, had in part been suggested by the Chinese Government itself. They resolved to deport the Chinese General to the French Isle of Réunion (*Ile de la Réunion*), formerly called *Ile Bourbon*, near Madagascar. The resolution reads as follows:

"Chang-Hsiun shall be invited to leave the Diplomatic Quarter *under the protection of the Diplomatic Body* in order to proceed to the French Isle of Réunion. There he shall live in freedom under the protection of French laws until the end of the war, when he may decide for himself whether to forsake his refuge upon French territory and proceed wherever he likes, with the exception, however, of China, until

* Ref., for instance, to meetings of June 6, July 28, and August 21, 1913.

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the Chinese Government has revoked its prohibition for him to reside in China."

The problem of the right of asylum appears even clearer from the following passage in the protocol of the same meeting, which I quote fully and almost literally.

Persuading the Netherlands Minister to yield and agree, though to a certain extent only, with the whole Diplomatic Body, BARON ALIOTTI remarked:

"Undoubtedly any Legation in the Diplomatic Quarter cannot exercise its individual right of asylum without creating a certain joint responsibility of the entire Diplomatic Body. For the latter is obliged to control everything occurring within the boundaries of the Diplomatic Quarter. It is at the same time the holder of the right of general asylum (*d'un droit d'asile général*), which ranks higher than the right of particular asylum (*droit d'asile particulier*) that is held by each of the Legations."

Yet, the representatives of Belgium, France, the Netherlands, and Russia protested strongly "against a theory which tends to curtail the rights of an individual Legation should the same be located in the Diplomatic Quarter. A Legation which is situated within the Quarter should not possess lesser rights than another located in a different place."

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They were seconded by their Portuguese (BATALHA DE FREITAS) and American (REINSCH) colleagues. The former said:

"I do not believe that the Portuguese Legation or the Danish Legation should enjoy greater rights merely because they lie *outside* the Diplomatic Quarter."*

REINSCH declared: "To submit the individual exercise of the right of asylum to the collective control of the Diplomatic Body would mean to establish an absolutely new theory, which would curtail in a very peculiar manner a right fully recognized as belonging to each Legation."

ALIOTTI made his idea clear, as follows:

"Certainly, as a matter of principle, the right of each Legation remains inviolable. As a matter of fact, however, the head of a Legation if he accepts anybody into the Diplomatic Quarter and thus abuses his right of particular asylum, subjects himself to joint reproaches of the Diplomatic Body, which, by the way, would be of a purely diplomatic nature."

The Dean, SIR JOHN JORDAN, stated his position thus: "According to my opinion the Legations which

*At present these two Legations have moved into the Diplomatic Quarter, and outside of the same are to be found, principally, the Legations of Sweden, Norway and Cuba.

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are situated within the Diplomatic Quarter are subjected to the regime established by the Protocol, and therefore the exercise of certain rights by them is inevitably restricted. The Legations cannot grant asylum to anybody without creating thereby a collective responsibility for all the other Legations which are in the Diplomatic Quarter on the strength of their rights as members of this Body."

The debates on this question of principle were thus closed for the time being. Still, just before the meeting was adjourned, the representative of Russia once more returned to the same question. In view of the different standpoints expressed at the meeting in respect to the extent of the right of asylum enjoyed by each separate Legation, he requested "that it be firmly established that the meeting never intended to doubt the particular nature of this right, which is fully held by each separate Legation and which is exercised by any Legation independently of the right of general asylum that belongs to the joint Diplomatic Body on the territory of the Diplomatic Quarter."

"This thesis is confirmed by the meeting," the protocol concludes.

Undoubtedly, therefore, the right of asylum *exists* from the viewpoint of the Diplomatic Body. This right exists quite as incontestably for each individual

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Legation in Peking, irrespectively whether it be located within the boundaries of the Diplomatic Quarter or outside of them. Let us remember the arguments that the respective right of the Legation cannot be curtailed on account of the fact that the Legation is situated on the territory of the Diplomatic Quarter. Accordingly, it is clear that the Diplomatic Quarter as such has nothing to do with this matter and the Legations enjoy the right of asylum without basing such right upon the legal status of the Diplomatic Quarter.

But then the latter, as a whole, in its part also enjoys the right of "general" asylum or a collective right of asylum, as opposed to the "particular" or private right of asylum enjoyed by the separate Legations. This stand is not denied by any one of the diplomats. The only difference of opinion among them consisted exclusively in the fact that according to the opinion of some the particular should submit to the general, the individual to the collective, while in the opinion of others such a submission or curtailment of the right of an individual Legation should not be tolerated. The conception is apparently one that both rights — the right of a separate unit and that of a body—exist in a parallel manner, without mitigating one another.

To be impartial, one should add here that the diplomatic right of asylum is confirmed or vindicated

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not by the Diplomatic Body alone. There is no one-sided claim in this matter, remaining unanswered and unrecognized. Even the Chinese Government by no means denies the right of asylum held by the representatives of the foreign Powers accredited to China.

We shall quote again a few lines from the protocol of the same meeting.

The Netherlands Minister reminded the meeting that the head of the Chinese Government had previously himself admitted the possibility of asylum being granted. "Though Chang-Hsiun deserves punishment by law, nobody can prevent him, however, from finding asylum in the Legation . . ." Such are the words of Marshal TUAN* in one of his telegrams — which had been communicated to the heads of several Legations at that time. Besides, this had not been stated before the moment when Chang-Hsiun was declared "an outlaw," but, on the contrary, at the time when "a pecuniary reward was promised for his head."

Further: "In 1913," continued the Dutch Minister, "the Diplomatic Body advised the Chinese Government of the stand it had adopted, namely that a person

* TUAN-CHI-JUI, the Supreme Executive of the Chinese Republic in a very recent period of her history (November, 1924, to April, 1926).

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seeking asylum could only be expelled beyond the boundaries of Chinese territory."

Nobody ever heard of any protest on the part of the Chinese Government in reply to this notification.

It appears that the Chinese Government did not even reject the right of asylum which, as we have seen, the diplomats call the right of "general" or collective asylum in favour of the entire Diplomatic Quarter as such. This is evident in another case already known to us, when the political opponents of the Chinese Government lived *en masse* in the Grand Hotel des Wagons-Lits.* Then the demand of the Chinese Government that they should be prohibited from residing there any longer was discussed by the Diplomatic Body, and answered to not from the standpoint of the right of asylum, etc., but solely on the basis of the ruling of the Final Protocol of 1901 which prohibited *Chinese* from residing within the Diplomatic Quarter.

Consequently, let us repeat: the right of asylum, which we are considering just now, — viz. that possessed by the Legations separately and the entire Diplomatic Quarter in Peking as a whole, — is in existence and is recognized.

From what did this right originate? It is a well known fact that the right of asylum ceased to exist a

* Vid. above our Chapter IV.

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long time ago. For instance, Oppenheim states that its last remnants disappeared in the course of the 19th century.

Generally speaking, therefore, BARON HAYASHI was correct when he drew the attention of his colleagues at the same meeting to the circumstance that "in any other country, in Europe or America, a person seeking refuge would after a certain time simply be asked to leave the Embassy or Legation."

Desiring to make our judgment as complete and exact as possible, we shall quote from Oppenheim two more remarks. They form an excellent illustration of the position of this question toward the viewpoint which is undoubtedly the dominating one at the present moment:

"That in practice in times of revolution and of persecution of certain classes of the population asylum is occasionally granted to refugees, and respected by the local authorities, there is no doubt; but this occasional practice does not shake the validity of the general rule of International Law, according to which there is no obligation on the part of the receiving State to grant to envoys the right of affording asylum to individuals not belonging to their suites."

Similarly: "The South American States, Peru excepted, still grant to foreign envoys the right to

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afford asylum to political refugees in time of revolution. It is, however, acknowledged that this right is not based upon a rule of International Law, but merely upon *local* usage."*

So it is incontestable that there is no legal ruling in favour of the *ius asyli*. But then, how about the "*local* usage," regarding China, Peking, and the Diplomatic Quarter we have been considering? We would state in reply that nothing whatever has been heard in China about any "usage" in so far as the right of asylum is concerned. Truly, as far as I know, almost all the textbooks and treatises on International Law maintain an absolute silence regarding such an institution in China. Thus, for instance, Moore devotes a long number of paragraphs for several scores of pages to the right of asylum in general and in particular to its position in South America, but he does not know and he mentions nothing about the right of asylum in China.** People will perhaps say that he is giving particular attention to America, being an American writer. This is a rather weak, though to a certain extent, an acceptable justification.

Here is another proof which, we trust, will be more convincing.

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*Vid. op. cit., I, par. 390 (pag. 565, etc.). Italics of the author.

**Op. cit., II, par. 291, etc., particularly par. 297—304 (pag. 755—845).

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SIR ERNEST SATOW is not an American, but a Britisher. Not only was he H. B. M. Minister to China, but he also participated in the work which led to the Final Protocol of 1901. His signature is found not only under this Protocol but under the Protocol of June 13, 1904, as well. We could not find a better authority. However, it appears that even he knows absolutely nothing about the "right of asylum," in respect to the Diplomatic Quarter as a whole, or of the right of any foreign Legation in China separately. In the same way as Moore, he describes profusely in his book, which I have already quoted, everything relating to the "right of asylum," and besides everything referring to the so-called *franchise du quartier,** but we do not find in his book a single word to the effect that such instructions,—which he also quite correctly assigns to the archives of history, — continue their existence in China. Yet who else, if not SIR ERNEST SATOW, could be better informed, it would seem, about such privileges of foreign Diplomats in China? And who else is better qualified than he to inform and enlighten his reader on this subject?

But there is another objection, which will still be argued against me. I do not doubt that I shall be told as follows:

* Op. cit., I, par. 330 — 345, pag. 301—324. Also *franchise des quartiers,* or otherwise *ius quarteriorum.*

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Neither Moore, nor SIR ERNEST SATOW, nor any other writers on International Law had any necessity to refer to China concerning the subject which is interesting us now, whereas it is indeed necessary to refer to South America in this respect. On the contrary, there was no need to take up this subject in its relation to China, a country with *consular jurisdiction.* It was unnecessary for the reason that our right of asylum forms one of the privileges of the *"consuls with jurisdiction."*

If anybody should argue in the way outlined above, he would be in a position to quote Liszt, for instance, where one will indeed find a general list of all the privileges belonging to such consuls in which there is no distinction made between the countries with consular jurisdiction, but all are thrown into one more or less amorphous mass. We find here under one and the same heading Turkey, Persia, the Far East, and Zanzibar, and quite involuntarily the reader begins to think that in *all* of the countries named the consuls always enjoy one and the same rights enumerated and all of them.*

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* Op. cit. 11th ed., par. 16; 12th ed. by Fleischmann (unfortunately without any change in respect of our subject), par. 25, page 215. Russian edition: 4th, par. 15, pag. 177, etc.; 5th, par. 16, pag. 114, etc.; Strupp, Theorie und Praxis des Voelkerrechts (1925), pag. 37 and 59, is not quite irreproachable in this question either.

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But, as a matter of fact, this is not true. From the same handbooks on International Law one may easily find out that whereas in Turkey the curtailment of her sovereignty through the capitulations was based both upon treaties and usage, in other Oriental countries it was and is being wholly based upon treaties.*

*Vid. e. g. Oppenheim, op. cit., I, par. 318, page 493. Vid. also Willoughby op. cit., page 18: "The whole body of extraterritorial rights which have existed in China for three quarters of a century owe their legal existence to concessions made by China in her treaties with Western Powers; in short... these treaties created the rights and did not simply recognize rights which had another origin." Vid. also other authors quoted by him. This viewpoint is incontestably prevailing.

(In proof of this prevalence we shall cite only two authors on our part:

In Hyde's book (op. cit., I, page 451) we read: "The extraterritorial privileges of Western States in Oriental countries, such as China and Japan, were not secured until well into the nineteenth century, when the supremacy of the territorial sovereign had long been recognized as a fundamental principle of International Law. There was no opportunity for the development of a customary law respecting the exemption of resident aliens. The treaties, therefore, specified clearly what was granted. The Western States gained no privileges of protection, whether jurisdictional in character or otherwise, over persons other than their own subjects or citizens."

Not otherwise, though perhaps more fully, we read in Moore (op. cit., II, par. 259, etc., pag. 596 & 602): "In dealing with the subject of extraterritorial jurisdiction, the fact should be borne in mind that while the system rests, in the Ottoman dominions, upon ancient custom as well as upon the provisions of treaties or so-called capitulations, it was established in China and in Japan by

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There are no treaties, however, existing in China granting a *ius asyli* to consuls or diplomatic representatives in the restricted meaning of the word. On the contrary, if we take for example the treaties of China,—the Treaty of Peace, Friendship and Commerce with Great Britain, signed at Tientsin in 1858, or the Treaty of Friendship, Commerce and Navigation with France, signed in the same city in the same year, which treaties on their part formed the model for a long row of treaties entered into by China with other "Treaty" Powers, — it is not difficult to convince one's

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the treaties with the Western Powers, the first being that concluded between Great Britain and China at the end of the Opium War, in 1842. The importance of this distinction is obvious. It serves to explain the existence in the Ottoman dominions of practices which were not based upon stipulations of treaties and which formed no part of the extraterritorial system as it was established in China and Japan. Of these practices the principal one is that of the protection granted by the consuls of Treaty Powers to the citizens of other Treaty Powers or to the citizens of non-Treaty Powers, or even to natives, not by the mere exercise of good offices. . . . . " " . . . . It may be pointed out, as a historical fact, that the practice of extraterritoriality in China and Japan began and rested upon the treaties, and did not originate in custom, as it did in the Ottoman dominions. This distinction has important consequences, and should not be lost sight of.")

By the way, neither Willoughby, Wellington Koo, Tyau, Soulié de Morant nor others in their works cited before (vid. page 9), show any trace of the mysterious privilege we have been examining. However, just works of this kind which are especially devoted to describe the various rights and privileges of foreigners, and this only in China, cannot be thrown aside.

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self that the principle of "reciprocity" formed the foundation stone for the legal status of the diplomatic agents of Great Britain or France in China on the one side, and of the diplomatic representatives of the latter country in Britain and France on the other.

Thus, after an enumeration of the "Rights and Privileges of the British Representative" (Article IV of the above-referred to Treaty of the 26th June, 1858), Article VI, entitled "Privileges of Chinese Ambassadors etc. in Great Britain," reads as follows:

"Her Majesty the Queen of Great Britain agrees that the privileges hereby secured shall be enjoyed in her dominions by the Ambassadors, Ministers or Diplomatic Agents of the Emperor of China, accredited to the Court of Her Majesty."

Or this is what we read in Article II, par. 3, of the above-mentioned treaty with France, dated the 27th June of the same year:

"The Diplomatic Agents shall reciprocally (*réciproquement*)* enjoy in the place of their residence the privileges and exemptions which are granted to them by International Law. This means that their person, family, house, and correspondence shall be inviolable, that they shall have the right to hire employees,

* Vid. again, for instance, the Treaty with Spain, of October 10, 1864, art. II, par. 2.

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messengers, interpreters, servants, etc., whom they require."

It is clear that once the principle of "reciprocity" is declared there can be no question of right of asylum on the part of either the British, French or any other Minister or Chargé d'Affaires in China.

Even those Ministers whom we have already quoted, and who declared with such assurance their *droit intégralement reconnu* or *intégralement détenu*—even they do not refer to any positive, special or general, standard. It would therefore hardly be unjust or risky on our part to presume that they made no such reference simply owing to the absence of any respective norm to such effect.*

* As regards in particular the Minister of the United States, who jointly with others opposed his Italian colleague in favour and for the protection of the right of asylum of the individual Legations at Peking, I shall permit myself to refresh his memory with the following words belonging to his own Government—the Government of the United States. This is what the Chargé d'Affaires of the United States in Peking received from the head of the American Foreign Office— MR. GRESHAM, Secretary of State, in 1894 (on August 29), who wrote him categorically and sternly as follows: "Nor can it (i. e. the U. S. Government) permit our Legation or our Consulates to be made an asylum for offenders against the laws from the pursuit of the legitimate agents of justice." (Cited from Moore, op. cit., IV, par. 655, page 602). See also the later communication of another Secretary of State—MR. ROOT, addressed to the Minister at Haiti (April 11, 1908): "I have to say that previous instructions have made it clear that this Government does not recognize the so-called right of asylum." (Vid. "Papers

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But in any case it would be positively impossible to understand from what the *droit d'asile* which we are considering could have originated as a right in favour of the Diplomatic Quarter as a separate and particular entity. As a matter of course, it is clear that it is just this particular question which is of particular interest for us in our investigation of the legal status and juristic nature of the Diplomatic Quarter in Peking.

Let us understand quite clearly — a claim is being presented for a certain quite extraordinary and excessive privilege, for a resurrection of a *ius quarteriorum* which had for a long time and irremediably fallen into oblivion and been condemned.* What is the possible basis for such a claim?

Relating to the Foreign Relations of the United States," 1908, page 435) Compare also the "Instructions to Diplomatic Officers of the United States" (1897), par. 51, to the effect that the Government of the United States repudiates "any attempt knowingly to harbour offenders against the laws from the pursuit of the legitimate agents of justice." (The last cited from Hyde, op. cit., I, page 763).

All of this, to say nothing of other things, the American Minister, MR. REINSCH, had managed to forget completely at the time of the above-quoted meeting in 1917.

* In the newest Russian 5th edition of Liszt's handbook, Prof. Hrabar states as follows (page 104): "In former times inviolability was often extended to the entire quarter of the city where an ambassador's residence was located (*ius quarteriorum*, or *franchise des quartiers*). This also established the right of asylum. ***This abnormal situation has survived up to the present at Peking.*** The status of the Legation Quarter in Peking is determined by the Protocol of September 7, 1901: the entire Quarter is under the extraterritorial administration of the Diplomatic Body." The words underlined by me are not to be found either in the German editions of the book, or in the previous Russian editions of the same.

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A priori it is obvious that even should such a source exist, a source in which the necessary support could be found in a way binding upon the entire Chinese Republic, the only document to be considered in this connection would be the Final Protocol of 1901, or to be more exact, its Seventh Article. (The Protocol of 1904 does not contain anything regarding the question, and even if it had contained such, it would have not been sufficient, being an act to which China had not been a party).

Let us, therefore, have another look at Article VII, which we know already. What do we find in it?

Leaving aside *a*) the boundaries of the Diplomatic Quarter, *b*) the means of defence, *c*) the permanent guard for the protection of the respective Legations, and *d*) the prohibition for Chinese to reside within the boundaries of the Quarter, — all these circumstances very important without any doubt, but standing in no relation to the matter we are now considering,—there will remain only the special designation of the Diplomatic Quarter for the special use of the Legations and the placing of it under their exclusive control.

That is why we are asking now whether it is permissible to assert on the basis of the above-given formula that the Diplomatic Quarter possesses the right

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of asylum? We are convinced that conscientiously nobody would venture to give other than a negative reply to this question. Consequently, this may not be asserted, and if so, then the right mentioned does not form an inherent privilege of the Diplomatic Quarter because it is quite impossible not only to find but even to conceive of any other foundation.

We wish once more to stress our point that besides treaties there can be no foundation, and that it would be impossible to find such despite the greatest desire to do so.

The French Minister was correct, when upon the declaration of war by China against the Central Empires in 1917,* he advanced the following thesis:

"The Austro-Germans, as well as any other foreigners in China, cannot claim any other rights for themselves than those they possess on the strength of existing treaties (with China)."**

* Vid. our Chapter VI.

** It would be instructive to add here that at a certain meeting of the Diplomatic Body of September 16, 1912, the American Minister, MR. CALHOUN, not only expressed the same idea as his French colleague did subsequently, but went even further because CALHOUN points out the necessity of a *restrictive interpretation* even of such rights and privileges which were obtained by agreement with China. He very justly made the following observation: "In view of the fact that the question relates to the curtailment of territorial sovereignty — and sovereignty is "common law" — therefore such a curtailment should be understood in a limited way."

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However, it is necessary to remember that this certainly correct and reasonable thesis should be enforced sincerely and scrupulously in all cases and everywhere, and not only where and when its edge is directed against the Austro-Germans and only purports to deprive the foe of a certain number of his rights and privileges.

To our regret we have to state, as we have seen in the claim to the "right of asylum," this desideratum of ours, despite its more than modest nature, was not adopted conciously and firmly by the Diplomatic Body.

As to the *ius asyli* of the Diplomatic Quarter — and this we are also bound to reiterate—it is devoid of the least legal foundation, as we may gather from the above outline of this question. It may be very regrettable, but here again we have to recognize and declare openly so that everybody may hear that this so-called right or rather lawlessness on Chinese soil is nothing but the fruit of cruel abuse, the fruit of weakness and pusillanimity of submissive China and her Government.*

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* As in the literature on the subject frequent references are made to the work of Robin "Le Droit d'asile dans les légations et les consulats étrangers et les négociations pour sa suppression en Harti" (Revue Générale de Droit International Public, t. XV, 1908), I wish to note that the author has nothing to

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say whatever about the Diplomatic Quarter and its right of asylum. However, availing myself of the present opportunity, I wish to quote what the author is saying about "la franchise des quartiers" in general: ". . . . A une certaine époque tout au moins, le droit d'asile fut exercé par les ambassadeurs non seulement dans leur demeure, mais encore dans leur quartier. Certains Etats avaient, en effet, accordé aux agents diplomatiques étrangers le droit de *franchise des quartiers*, c'est-à-dire l'exemption de la juridiction locale en faveur de toutes les maisons situées dans le quartier de l'hôtel, quartier séparé du reste de la ville par des barrières ou par des chaînes tendues chaque soir, et sur lequel l'envoyé diplomatique régnait en maître. Or il arriva pour le quartier ce qui s'était produit pour l'hôtel: par une conséquence logique de la fiction de l'exterritorialité prise pour une réalité, on le considéra comme territoire de l'Etat que l'ambassadeur représentait. Et les conspirateurs et fauteurs de troubles ainsi que des criminels y trouvaient souvent un *asile* assuré. Mais les abus qu'une telle pratique engendra amenèrent les Etats qui avaient accordé la franchise des quartiers aux agents diplomatiques à l'abolir, et a déclarer qu'ils ne recevraient plus les envoyés qui n'y renonceraient pas expressément. La franchise des quartiers disparut ainsi en Europe à la fin du XVIIe siècle et avec elle le droit d'asile qui en avait été la conséquence . . . La franchise des quartiers existe encore dans les pays d'Orient, notamment en Chine, au profit des quartiers assignés aux Européens. (V. traité franco-chinois du 27 juin 1858, art. 10)." L. cit., page 470. All this *exposé* has at present been taken over almost literally by Fauchille op. cit. I, 3, page 84 (No. 699), even as regards the reference made to China and the article 10 of the Franco-Chinese Treaty of 1858. Nevertheless, this reference is faulty and the whole remark is not correct. This is not the place to go deeper into the subject or to discuss it *ex professo*. I shall limit myself to the quotation of the above-mentioned article 10. An unbiased reader will easily convince himself from its perusal that there is absolutely nothing in it to confirm the thesis of the French author inasmuch as the matter refers to China. At the same time the reader, perhaps, will understand the light weight of the foundation upon which the

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European in the Far East, or to be more exact, in China, is sometimes apt to erect an edifice of his rights, immunities and prerogatives. The arbitrary assertion makes its way from book to book, and in the end a "myth" or "legend" gets converted into a "universally recognized" juristic thesis. Our diplomats hasten to proclaim that we have here *un droit intégralement reconnu,* and thereafter all the people firmly believe in the thing, all . . . even including the Chinese Government.

We shall now give the text of the rather innocent Article X of the Treaty of Tientsin :

"Tout Français qui, conformément aux stipulations de l'Article six du présent Traité, arrivera dans l'un des ports ouverts au commerce étranger, pourra, quelle que soit la durée de son séjour, y louer des maisons et des magasins pour déposer des marchandises, ou bien affermer des terrains et y bâtir lui-même des maisons et des magasins. Les Français pourront, de la même manière, établir des églises, des hôpitaux, des hospices, des écoles et des cimetières. Dans ce but, l'autorité locale, après s'être concertée avec le Consul, désignera les quartiers les plus convenables pour la résidence des Français et les endroits dans lesquels pourront avoir lieu les constructions précitées.

Le prix des loyers et des fermages sera librement débattu entre les parties intéressées, et réglé, autant que faire se pourra, conformément à la moyenne des prix locaux.

Les autorités Chinoises empêcheront leurs nationaux de surfaire ou d'exiger des prix exorbitants, et le Consul veillera, de son côté, à ce que les Français n'usent pas de violence ou de contrainte pour forcer le consentement des propriétaires. Il est bien entendu, d'ailleurs, que le nombre des maisons et l'étendue des terrains à affecter aux Français dans les ports ouverts au commerce étranger ne seront point limités et qu'ils seront déterminés d'après les convenances des ayants-droit. Si des Chinois violaient ou détruisaient des églises ou des cimetières Français, les coupables seraient punis suivant toute la rigueur des lois du pays."

(Vid. the cited Shanghai edition of Treaties, vol. I, page 608. Compare also e. g. Art XII of the Treaty of Peking of November 2, 1865, between Belgium and China, ibidem, vol. II, pag. 9).

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Now, where in all this is there even an allusion to the terrible *ius quarteriorum*?

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VIII.

"Use of the Legations" — What It Involves and What It Does Not.

Let us bring out a few more considerations and facts closely connected with those we have been discussing in the preceding Chapter.

In this Chapter it was explained that in settling the problem regarding the privileges connected with the Diplomatic Quarter, the point at issue should be taken from the only juristically suitable basis, viz. the ruling that this Quarter was given "specially" "for the use of the Legations." Undoubtedly it is in view of this purpose, namely that the Legations might avail themselves of their right to use the Quarter, that the same is placed under their exclusive control or administration.

The Diplomatic Quarter is thus assigned to the *use,* or *special use of the Legations.* Being a jurist, I, therefore, do not hesitate to admit the lawfulness of any claims of the Legations that relate to the use of the Quarter, the creation of most convenient or favourable conditions for the same, etc. But I go no further. According to my conviction it is not admissible

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to go any further unless it were desired, without any sufficient reason, to curtail the right of one of the contracting parties — in our case China — which never intended to grant a more extensive complex of rights to be exempted from the general course of the law in the country.

In order to guarantee an unimpeded and adequate use of the Diplomatic Quarter, the privilege was granted, as we have already mentioned, of having its own exclusive administration. In other words, the Diplomatic Quarter was to enjoy complete self-government.

Consequently, it was quite reasonable and absolutely lawful—in direct execution of the ruling contained in Article VII of the Final Protocol—that the Representatives of the Powers signers of this Protocol made provisions in Art. 7 of the Protocol of June 13, 1904, for the issuance of a Statute for the Diplomatic Quarter, or to be more exact, of General Police Regulations and Road Regulations, without any participation of China. The Police and Road Regulations exactly correspond to the "police" mentioned in the French text of Article VII of the Protocol of September 7, 1901.*

* In the English versions of this Article we read "control" or "police," used promiscuously: vid., for instance, MacMurray I, pag. 282 and 315, or Mayers' cited "Treaties," page 294. According to Art. XII of the Final Protocol "the French text only is authoritative."

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The separate parts of the Statute, as elaborated, its subdivisions, or annexes, etc., are in unfailing harmony with all this. This applies to the general regulations regarding the police and roads, as well as the "Administrative Commission" which is in charge of this police, these roads and the funds of the Diplomatic Quarter. Then there are more detailed bye-laws: referring to rickshaws; epizootics; horses, donkeys, and mules infected by the glanders; rabid animals; the use of ways of communication, their repair, canalization. Actually all this relates in one way or another to the use of the Diplomatic Quarter, giving conditions for the same and facilitating or improving such use. At the same time, in connection with the use of the Quarter, it has a direct relation to the stipulated administration of the Quarter.

We repeat that we recognize all this to be perfectly correct and legally incontestable.

However, *anything in addition* to this "comes from the devil." And that is incorrect, is wrong and illegal.

In certain cases, a doubt may be admitted whether an illegality has indeed taken place or not, whether people have already transgressed the limit of what is allowed, or whether they still observe it.

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As to the matter before us, namely whether it was still an *usus*, — in other words a lawful enforcement of a right (and in application to the circumstances under consideration a lawful use of the Quarter and lawful administration of the same), — or an *abusus*, namely an abuse in the use of a right, controversies arose several times within the Diplomatic Body itself.

Thus a case is remembered which, by the way, we have already mentioned in connection with another matter.* This refers to the building proper of the German-Asiatic Bank, of which we have also spoken in the course of our discussion.** The details of the present case are the following.

An American credit institution — the Bank of Commerce of China—had leased from the Chinese Ministry of Finance the building formerly occupied by the above-named German Bank for a term of three years. Upon the conclusion of the agreement the Minister of Finance, who was duly authorized to execute the same, officially advised the Administrative Commission of the Diplomatic Quarter of this fact by a letter dated May 12, 1919. The latter replied that on its part there were no objections. Accordingly the American Legation applied to the Chairman of the

* Vid. above Chapter IV (the end). (Meeting of the Diplomatic Body of November 21, 1919. We draw attention to the date).

** Vid. above Chapter VI.

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above Commission on October 22 in order to obtain the keys of the building. Then it was suddenly ascertained that there had already been a protest in this matter lodged by the Belgian Chargé d'Affaires (BARON VILLENFAGNE DE SORINNES) on May 26.

The American Chargé d'Affaires (DR. TENNEY) then decided to bring the matter bofore a meeting of the Diplomatic Body.

Here, after removing a number of other incidental misunderstandings, the Diplomatic Body went into the substance of the matter, and upon hearing the heated arguments of the two opponents — the American and Belgian Chargés d'Affaires (in another part of our study we have made certain reference to this discussion), — the Diplomatic Body passed a resolution refusing to approve the agreement made between the Chinese Minister of Finance and the bank. In other words the Diplomatic Body did not permit this agreement to be put into effect. Instead the Diplomatic Body suggested to the Chinese Government that it should put the building of the German-Asiatic Bank up for sale by public auction.*

* The Chinese Government preferred to return the building to the German Bank in 1921-24. (See "The China Year Book," 1925-6: "Public Documents," page 786).

From the discussions at the above-mentioned meeting I have omitted everything relating to the tendency of a great part of the members to apply to this matter art. 130, par. 2, of the Treaty of Versailles which directs that "no steps should be taken by the Chinese Government respecting the disposal of German public or private

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Let us now ask the question whether the Diplomatic Body was right in making such a decision? Or, on the contrary, whether the American Chargé d'Affaires was right when he proved that considering: 1, that the building had passed over to China; and 2, that the agreement entered into with the American bank did not violate in any way Article VII of the Final Protocol because it did not authorize any Chinese citizens to reside in the Diplomatic Quarter, — the Diplomatic Body had no right to oppose a legal act of the Chinese Government? Let us add that DR. TENNEY maintained his opinion until the end, when "owing to the impossibility of arriving at a unanimous decision to the effect that the agreement between the Chinese Government and the American bank was approved, he also declared that he would accept the formula of compromise" (re the public sale of the building, as stated above).

property located in Peking in the so-called Legation Quarter, without the consent of the diplomatic representatives of such of the Powers as shall still be contracting parties to the Final Protocol of September 7, 1901, at the time when the present Treaty goes into effect."

It is hardly necessary to prove that a similar demand regarding the application of an agreement not signed by China and not ratified by the United States, which had not yet gone into effect,— and as regards the Netherlands, e. g., that country had not even participated in the Treaty of Versailles, — was obviously without foundation.

In our reasoning we certainly are standing solely upon the basis of the Final Protocol of 1901.

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In our opinion a reply to the question proposed should be given as in the present case the Diplomatic Body could hardly be said to have committed a violation of the law.

It is true one does not hear much courtesy, any excessive expression of esteem, or of friendly feelings towards China and her Government in the decision of the Diplomatic Body. However, considering the question from a legal standpoint, it should not be ignored that the Diplomatic Body very firmly adopted the practice according to which it possessed control over absolutely everything occurring within the boundaries ot the Diplomatic Quarter as a whole. Consequently, for any change in the *status quo*, according to practice, the unanimous consent of the Diplomatic Body was necessary. Thus any question, even a most trivial one, as soon as it gets beyond the scope of an individual Legation in the proper meaning of the word, must be put before a meeting of the diplomats. For any decision taken by the Administrative Commission an appeal can be filed with the Diplomatic Body, having the effect of holding up the execution of the decision of the Commission. Besides, all the resolutions of the Commission can be put into effect only if they are approved by the representatives of the Powers.*

* Statute, Art. XII (XV).

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Finally, it is impossible to ignore the fact that the fundamental condition, both necessary and natural, namely that "use" be present as well as the connected "administration" of the Diplomatic Quarter, also existed without any doubt. If such "use" is granted to the Diplomatic Body, one will understand that this Body may not at its own discretion admit into the Diplomatic Quarter for permanent residence, or even a stay, anybody — a physical person (we are not referring to Chinese in this place) or a corporation. Therefore, taking all this into account, we believe that it may be asserted that the Diplomatic Body had not exceeded its powers.

But on the other hand — and particular stress should be laid on this—everything not connected with the "use" or with the "administration" so closely bound to it, everything which from the viewpoint of a reasonable judge interpreting agreements according to the principles of *good faith,* does not enter into these conceptions, should be set aside and considered to be outside the scope of the exemptions, rights and privileges which are granted to the Diplomatic Quarter and the Legations situated in the same.

We wish to remind the reader that we have already examined and rejected one of the privileges unjustly included in the prerogatives of the Diplomatic Body. We are speaking of the "right of asylum."

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We shall, however, have to decide exactly the same way in every other analogous case, should such a case present itself and if any unfounded claims are put forward in respect to other privileges.

I say "should" and "if," and I am prepared to cherish the very best hope. But such a presumption is not quite so unlikely for the following reason.

Should anyone read more attentively our source of information—I mean the "Protocols of the Meetings of the Diplomatic Body"—he would observe immediately that the diplomatic representatives themselves, it would appear, fail to see, or maybe do not recognize the restriction and limit which exist in this respect, and which have been emphasized by us accordingly.

Obviously to our diplomats the entire problem appeared in such a light, as if they—as a body—were *sovereigns* in the territory of the Diplomatic Quarter. Of this "sovereignty" the Ministers have spoken more than once, — not only the Ministers of one foreign Power but of many. Often several of them precisely invoke this very idea of *sovereignty*.

Thus the Dean, SIR JOHN JORDAN, in one explanation to his colleagues deduced the conclusion that he desired, i. e. that in the Diplomatic Quarter we are faced by a "Community of Sovereign Owners" (*Une*

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Communauté de Propriétaires Souverains).* In the same sense the Italian Minister (BARON ALIOTTI) recognizes that the Diplomatic Body may in the Diplomatic Quarter perform absolutely sovereign (*en toute souveraineté*) actions, such as are performed upon its own territory by the supreme authorities of a State.**

As regards the representatives of Russia and Japan, for instance, (PRINCE KUDASHEFF and BARON HAYASHI) they do not even find any difficulty in discovering the legal origin of their territorial sovereign rights, asserting that the same had been "delegated" to the Diplomatic Body within the boundaries of the Diplomatic Quarter by China herself. This is the express assertion of one of them. The sovereign rights of the Chinese Government to the territory of the Diplomatic Quarter have been entrusted to the Diplomatic Body—was the explanation of the second.*** However, let us inquire how they build up such an argument? From what source do they gather this *mania grandiosa* if I may be permitted to express myself thus?

They have taken it from the same immutable source of ideas, conceptions and experiences which had long ago become obsolete and are now being

* November 14, 1918.

** October 2, 1917.

*** Ibidem.

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given new life by the aspirations and habits of greedy and forcible imperialism in China.

We are told that sovereignty is inherent in the Diplomatic Body, or at least, it is being exercised by it on the territory of the Diplomatic Quarter.

In reply one cannot but ask: how about the *functions* of sovereignty? Are they also inherent in this Diplomatic Body in the territory named? For instance, how about the right to mint coins? Or issue its own paper money? Or the right to establish its own Court of justice acting in the name of its own judicial sovereignty? At least over those "simple boys" (*de simples boys*) whom the French representative mentioned at a certain meeting? And so forth.

Without any further discussion it is quite clear that the reply can only be—no, no and no! In particular as regards the Court the Diplomatic Quarter never created nor does it create now any special jurisdiction nor did it change the jurisdiction proper to the person concerned as such. The extraterritoriality in any of its forms and causes and, on the contrary, the absence of extraterritoriality of any person in China or in Peking *outside* the Diplomatic Quarter, are quite the same as they are inside the Diplomatic Quarter. Not an iota more or less! The only difference is that in the Diplomatic Quarter a person is outside

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the zone where he may be reached by judicial process and is therefore immune from such process. But on the other hand it is quite clear that this circumstance does not in the slightest affect the status of such a person.*

* There is no question either of right to punish or chastise (*ius puniendi*). We have seen (Chapter V) that even the imposition of a small monetary fine by the police of the Legation Quarter for the violation of certain regulations of the Statute called forth serious protests and complaints, even among the members of the Diplomatic Body. Fortunately the Diplomatic Quarter as such never had and at present has no prison or place of detention. Moreover there were no means of compulsion even, say for the inducement of paying rent within the Diplomatic Quarter. Such payments of rent were made very irregularly. Nevertheless, the Administrative Commissions which originally existed in the various sections were powerless and helpless in such occurrences. (Vid. e. g. the meeting of May 29, 1913). And not only these Commissions. Already in 1907 (meeting of March 9) the question of how people in arrears with payment of the tax on real estate should be compelled to make such payments, was discussed. The result of the debates was far from brilliant. Nevertheless, at the end of the meeting the Dean found it possible to declare that with the exception of England and Portugal, the Ministers of the other Powers *possess* the right to apply measures of coercion in order to induce their countrymen to pay what is due. But what followed? Still in the second half of 1913 (meeting of August 21) the German Minister (BARON SECKENDORFF) complained that his position was extremely difficult in respect of those Germans who stubbornly refused to pay the taxes due. In every such case he had to apply to the German Consul at Tientsin because he himself had neither judiciary nor administrative powers.

In order to characterize the modesty of the privileges enjoyed by the Ministers in administrative matters the following case

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Besides, as far as I know, nobody has yet affirmed the contrary. So much the better. But in such a case, and in respect to other legal relations of an identical nature in so far as our juristic standpoint is concerned, we should adhere to this position — the only possible, correct and acceptable position which is devoid of any tendency and exaggeration. This should be done consequently and logically.

Among other things, we should not be misled by the right of each Legation to keep its own guard inside the Diplomatic Quarter, nor because of it recognize any sovereign rights of the group of representatives of foreign Powers having their residence inside the Diplomatic Quarter. As COUNT MARTEL, who

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is very characteristic. It occurred in 1912. Near the German barracks there was a powder magazine. According to the unanimous decision of the commandants of the Legation Guards no building should be erected within a distance of 50 metres or yards from such magazines. Otherwise the greatest danger would threaten not only the German Legation Guard but also the whole Diplomatic Quarter. In spite of this, a certain Russian subject began to erect a building just within this "danger zone," turning an absolutely deaf ear to any admonitions. Through the medium of a written report on this subject by the Senior Commandant of the Legation Guards to the Dean of the Diplomatic Body SIR JOHN JORDAN, and also following a request of the German Minister, the case was put before the Diplomatic Body. Here, at the meeting of June 11, the German Minister (HAXTHAUSEN) insistently applied for help. He pointed out that he would be only too glad to assign the powder magazine to another suitable place, but that it was absolutely impossible to find one. The German Government

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was at the time the French Chargé d'Affaires, very reasonably remarked at the same famous October meeting in 1917: "In China the foreign guards were only created for the defence of the Diplomatic personnel." In other words, these guards are nothing but a kind of bodyguards, both by intent and purpose of the contracting parties as well as by the substance of the matter. In any case it would be quite illogical to

was even prepared to purchase this lot of land and for this purpose an appropriation of M$ 50,000 had been made, but the Russian owner demanded M$ 80,000, an excessive price, and therefore the deal could not be concluded. He continued in the building of this house at a distance of only about 10 metres from the powder magazine. The German Minister drew the attention of the meeting to the fact that in the present case he was not pleading his own cause but the cause of the general welfare and the welfare of all residents in the Diplomatic Quarter, and that it would appear that private interests should unconditionally yield before such public interests. Alas! All these arguments were of no avail. The representative of Russia (KRUPENSKY) replied that even if he desired to suspend the construction, he would be powerless to enforce this, because how can you prohibit an owner from building on his own land? KRUPENSKY was seconded by the representative of France (MARGERIE). COUNT SFORZA even declared that if he, the Italian Minister, had applied coercion such as that suggested, against an Italian subject, then the latter, even should he be culpable, might have sued him before the Italian Administrative Court for exceeding his powers. Regarding the postulate of public interest, he would only repeat what had been said, viz. that the Diplomatic Quarter cannot be converted into a municipality, "it has to remain the Diplomatic Quarter." Vid. also the meeting of May 21, 1910, on the subject that within the boundaries of the Diplomatic Quarter everybody was building arbitrarily at random and where he liked.

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deduct therefrom any functions of military sovereignty,— just as it has been regarding any financial, judiciary or other functions pertaining to the Diplomatic Body.

We should in the same way approach the problem of the "territory" of the Diplomatic Quarter. Here just as resolutely any passions and misunderstandings should be avoided.

No "territory" in the sense of an element of a State may be found in the Diplomatic Quarter. One simply observes an area of land, set apart in the interest of a separate use and independent administration.

Let us imagine that in one of the streets of the Diplomatic Quarter a crime, for instance murder, had been committed by anybody — a Chinese, an unprivileged German or Soviet citizen, a privileged ("extra-territorial") foreigner, French, Italian, British, American — it is all the same. The crime was committed upon the territory of *China*, quite in the same way as if it had been perpetrated outside the boundaries of the Diplomatic Quarter — in another part of Peking, at Nanking, Canton, Harbin, etc. Should one hold the contrary opinion, then to say nothing of other difficulties, we would be faced by the insolvable problem of where to find the place of committal of the crime, the *forum delicti commissi*, — in France, Spain, Holland, Japan, Great Britain or the United States of America.

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In other words the whole problem is just as it is explained in any handbook of International Law — in respect of the residence of an ambassador.

"The immunity of the residence of an ambassador does not contain any fiction on the strength of which the residence of an ambassador should be considered as a territory of the State that appointed him. If in the residence of the British ambassador in Berlin an Englishman kills another Englishman, the crime will have been committed upon German territory and he will have to be judged by German judges."*

Or let us take, also for the sake of an example, a phenomenon from another domain — the domain of private law. A well known ruling of Private International Law stipulates that *locus regit actum,* or in other words that the form of a contract is determined, — or

* Liszt - Hrabar, 4th ed., page 156; 5th ed., page 104. (Liszt-11th ed., pag. 121, etc.; Liszt-Fleischmann, 12th ed., page 200, with the only difference that for some reason the incident involving an Englishman is replaced by an incident involving a Russian). By the way, I would like to remind the reader of the well known incident concerning the Russian subject Nikitchenkoff, who made in 1867 an attempt against the life of the Secretary of the Russian Embassy in Paris, BALSH. At the demand of the French authorities, recognized by the Cabinet of St. Petersburg, Nikitchenkoff was tried in Paris and under French laws. Vid. e. g. Martens "Contemporary International Law of Civilized Nations," 5th ed., vol. II (1905), pag. 48, etc., or Louter "Le Droit International Positif," II (1920), pag. 47, etc., also SIR ERNEST SATOW, op. cit., I, par. 327, pag. 292, etc.

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better, — may be determined by the law of the place where it was made. The question, therefore, arises in the case of a contract entered into in our Diplomatic Quarter, which demands as regards form should it satisfy? Demands though they be even put forward in an alternative way by the Diplomatic Quarter? But there can be no demands of the kind, and such do not exist. Or, on the contrary, demands not conditioned by the said Quarter in any way and by no means? Certainly, the latter is the case.

To be more explicit, I shall quote another illustration. The German Law Regarding the Introducing of the Civil Code of 1896 stipulates as follows in Art. 11:

"The form of a legal transaction is determined in accordance with the laws in force regarding the legal relation forming the contents of the transaction. However, it is sufficient to observe the laws of *the place where the legal transaction has been made.*"

Let us suppose the legal transaction is effected in the Diplomatic Quarter in one of the trading premises in Marco Polo Street, and that the transaction by its nature is German. Where is there then from the viewpoint of German law the subsidiary form for the given transaction? Is it the form prescribed by the laws of the Diplomatic Quarter in Peking? Obviously not, because, as we repeat, there is no such

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form. Thus the whole matter rests and will rest only with the form prescribed by the laws of *China.*

Or let us take an example from one of the laws which assign to the rule of *locus regit actum* again an alternative importance only, it is true, but not a subsidiary one. Let us take, for instance, the Italian law where the rule cited holds the first place. Article 9 of the Italian Civil Code of 1865 begins as follows:

"The outward form of transactions between living persons and of acts of last will is determined by the laws of *the place where they are made.*"

Let us assume that the transaction was also concluded in Marco Polo Street, and that the lawsuit is being prosecuted at say Florence. When will the Italian judge then recognize the transaction a legal one from the point of view of form? Naturally, the reply will be the same as before: inasmuch as the form of the place of making the transaction is of interest, the judge will take into consideration the laws of *China* only.

The same, undoubtedly, we shall have to state in consideration of Art. 7 of the Code of Civil Procedure of the R. S. F. S. R. of 1923, whenever the action comes for hearing in Moscow.

Consequently, there is neither sovereignty, supreme power nor territory. Nothing of the kind is to be

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found, nor is anything of the kind connected with the Diplomatic Quarter to characterize it from the juristic viewpoint. Now, if matters stand like this then the juristic structure and doctrine quoted or, one might say, professed by the members of the Diplomatic Body at Peking, are, like some defective, unserviceable building falling inevitably and unfailingly into ruin. We shall, however, have to add that our statement should not create any surprise because all these premisses and theses are far from being the product of unbiased, well founded thought, or the work of a juristic mind, without which it is positively impossible to obtain a true, reliable result as regards juristic qualification of any institution. It still appears that such assertions are nothing else but subjective illusions and arbitrary postulates of diplomats and politicians, insufficiently based in a juristic way.

Even should anybody desire to "define" and "construct," then it would be the closer to reality that the juristic nature of the Diplomatic Quarter were expressed by the following formula:

"The Diplomatic Quarter at Peking represents a strictly delimited area of land which has been granted by China to the Powers signatory to the Protocol of 1901, for their exclusive use, and with the right a) of autonomous administration in

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the interior; b) of making the Quarter defensible, and c) of the maintenance of a permanent guard by each of the Powers concerned, so as to effect the defence of the Diplomatic Legations which are located within the area named, where each of them has been assigned a special lot of land and holds it on the basis of the right of property."

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Conclusion.

The fact that it is incorrect and inadmissible to make a liberal interpretation of the rights and privileges granted by China in respect of the Diplomatic Quarter is corroborated by a few statements of the Ministers themselves—the best of them. These statements refer to the earlier period when the Diplomatic Quarter was being "constructed," and the purpose and scope of the powers stipulated in its respect were still fresh in the minds of the persons concerned, and had not been thrust into the background by persons who appeared later on the stage of the Diplomatic Quarter, nor by an intention, it may be subconscious, to interpret its privileges in as broad and unlimited a way as possible.

The following considerations are worth remembering. They are, mostly, the verbal or even written statements of the representatives of Russia and England. These are as follows:

In a meeting of the Diplomatic Body (the tenth in consecutive order), held on November 24, 1900, GIERS declared:

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1. "The district to be created *(le district à créer)* should be a Diplomatic Quarter satisfying the conditions demanded for the defence of the Legations, but in no way should it be a "settlement" similar to those existing in several cities in China.

2. Due regard should be paid to the position of the Chinese and any steps avoided which were not absolutely necessary.

3. Due reserve should be manifested in view of certain political considerations."

As regards the boundaries of the Diplomatic Quarter GIERS felt unable to include in them the Tsien Men Gate, which is the most important gate of the Chinese capital, and, consequently, this gate remains outside the Diplomatic Quarter.

Supplementing the discussions at the same meeting SIR ERNEST SATOW, in a very detailed written communication dated December 10th of the same year,* protested against the excessive area of the territory to be alloted to the Diplomatic Quarter. The British Minister made the following observation among others:

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* Vid. the already quoted document No. 25 of the "Annexes" (vol. I, p. 2). We know that subsequently SIR ERNEST SATOW expressed himself along similar lines: compare our Chapter II (in the end).

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"He wishes to recall to the memory of his colleagues that the original proposal of M. DELCASSÉ* was simply that a permanent guard should be established at Peking for the safety of the Legations, and that the idea of erecting a defensible Legation Quarter and to give it such wide extension as seems to be contemplated originated here." **

But, continued the same representative of Great Britain, if such an idea of " . . . a sort of Diplomatic fortress inside the walls of the city" would seem quite comprehensible after the cruel happenings of the summer months of 1900, then and after all that happened since one might feel perfectly assured that

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* The well known French Minister for Foreign Affairs of the period.

** It would be worth while to remark that even in the collective note handed by the foreign representatives to the Chinese Government on December 22, 1900, a note establishing "the essential conditions for the resumption of normal relations of friendship with China," Art. VII stipulates only "the right of each Power to establish a permanent guard for its respective Legation and put the Diplomatic Quarter into a defensible position. The Chinese will not have the right to reside in this Quarter." Vid. meeting of December 24, 1900 (the so-called *Premier Protocole*) and of January 2, 1901 (both quoted by Hertslet, op. cit., II, pag. 1169 & 1171). In reply to this (the demand having already been accepted by the Emperor), the Chinese plenipotentiaries state in their "memorandum": "We would insistently request you to fix the contingent of this guard and draw up detailed police regulations in order to avoid any disturbances which might arise outside of the boundaries of this Quarter" (!) (Annex No. 36, vol. I, p. 2, page 27).

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events of that period would never repeat themselves even without the erection ot such a fortress.

Naturally, SIR ERNEST SATOW was very far from desiring to suggest the idea that at that moment any measures of precaution were already unnecessary. "But he believes that they will, year by year, become less necessary, and that eventually, at no distant date, it will be possible to dispense with them altogether."

Finally, he particularly feared that putting into effect the contemplated plan would prevent the Diplomatic Body from realizing the expectations of their respective governments, because in this way it might happen that the aim would not be achieved on which the governments seemed rather to have come to an understanding. This aim was — "an early reestablishment of a strong and friendly native administration at the capital."*

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* Compare further the statement made by W. W. ROCKHILL, Commissioner of the United States to China in 1901: "I . . shall oppose adopting or beginning work on any system of defence at present. I submitted to-day to my colleagues that the political side of this question, as well as of all the questions connected with military measures to be taken in this province, was infinitely the most important, and they must all agree with me that the carrying out of the elaborate plan provided for by the report was of very doubtful expediency, if we propose to try and establish cordial relations with the Chinese Government. We had, by

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These are beautiful sentiments and words shedding brilliant light upon the regular precipice separating this opinion from the opinion of the later period. Moreover the statements quoted are of quite exceptional value, because they were uttered in 1900, the year of the "Boxer Rising," particularly if one remembers that only a few months before there was fighting and bloodshed.

It is true that even then not everybody held the same lofty standpoint. However, even these others foresaw at that time that very soon the glacis as a means of defence at least would have to be abandoned. At this juncture the question came up as to the best use to be made of the lands pertaining to the glacis, i. e. how to use them in the interests of the "common welfare." The opinion was voiced that once China had ceded all the lands for the glacis free of

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the terms of the Joint Note, acquired the right to make the diplomatic quarter defensible, and to hold with military forces the lines of communication with the sea, but we should, I thought, confine ourselves to letting the Chinese know that we will only exercise these rights so far as conditions may require, and that the extent of our defensive measures, both in Peking and along the lines of communication, must always depend on the spirit which may animate the Chinese Government and people." Vid. the letter to MR. HAY, Secretary of State, March 2, 1901, in the "Report of WILLIAM W. ROCKHILL, Late Commissioner to China, with Accompanying Documents" (Washington 1901: 57th Congress, 1st Session, Senate, Document No. 67), page 96.

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charge and for a specified purpose, justice would demand as soon as this purpose had disappeared that these lands be retroceded to China without any compensation. This viewpoint was expressed, for instance, by BEAU, the French Minister, as far back as in 1901* and supplemented in 1904 by his successor DUBAIL.** The latter also stated that this viewpoint of the future of the glacis was shared by numerous governments. When France questioned them through her diplomatic representatives abroad, they all agreed with this view.

When one compares the above-outlined attitude towards this matter with the attitude taken later by members of the Diplomatic Body in Peking respecting the enticing "right of asylum," "sovereignty" and other matters, one cannot but feel sorry. At the same time such an attitude on their part is not only unsatisfactory but difficult to understand, especially as time and again these later representatives of the foreign Powers themselves have made observations and remarks of an absolutely contrary nature which were both correct and acceptable. Thus our old acquaintances, the Japanese Minister IJUIN and the Spanish Minister PASTOR incidentally emphasized that the circumstances since the siege of the Legations had changed rather considerably, and that the feelings of Chinese and

* Vid. meeting of December 21.

** Vid. meeting of January 12.

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foreigners towards one another had materially improved, and that, consequently, it would be reasonable to give up severity.* Apparently the American Minister CALHOUN, whom we have also already referred to, approached the position of the two above-mentioned diplomats when he drew the attention of his colleagues to the fact that the national feeling of the Chinese had grown much stronger and was developing since the adoption of the republican form of government.**

In spite of all this there is still no evolution along the only just and sane lines, and has even failed to proceed along such lines up to the present day. However, a change should have taken place a long time ago.

The measures of precaution which "at no distant date" according to the idea and expression of SIR ERNEST SATOW, should have become positively unnecessary, have been in existence now for a whole quarter of a century. Irrespective of what one may think of the past, these measures are certainly now more than unnecessary, because they are obnoxious, odious and without principle.

Consequently, they should be given up now, once and for all.

* Vid. the above-quoted meetings of August 2 and September 9, 1911.

** October 7, 1912.

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In the first place the *right* to keep a permanent guard should be given up. It is purely a question of *right,* and nothing else, as we have already shown.* Besides, this has never been doubted nor questioned by anybody. Accordingly, of the remaining nine (except China) co-signatories to the Final Protocol of 1901, only five are keeping a permanent guard. A guard was either never kept, or is no longer kept by Belgium, the Netherlands, Spain, and, naturally and obviously, by the Union of Soviet Socialist Republics. As heretofore, a Legation guard is maintained only by France, Great Britain, Italy, Japan, and the United States of America. Therefore, these five Powers would only have to follow the good example set by others. Let them remember in this connection the exclamation which involuntarily escaped the Spanish Minister in a sincere moment:

"...Where else can one find in the whole universe a State in which the Diplomatic Legations were under the protection of their own military guards?"**

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* Vid. above our Chapter II.

** Vid. above Chapter VI. We wish to remind the reader of another circumstance, by the way, which we incidentally mentioned a long time before in the second Chapter of our narrative.

As a matter of fact, the former Russian Imperial Government had already in the beginning of the year 1914 evacuated almost nine-tenth of its permanent guard from Peking, explaining its action by the *absence of any necessity* to keep there any armed forces.

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If the representatives of these "persisting" Great Powers agree with their Spanish colleague (and how can they not agree?), then, probably, they will not themselves desire by maintaining their guard, to maintain

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"The Chinese viewpoint" on this question is very well outlined by Chong Su Hee in his book "The foreign trade of China" (published under the auspices of The China Society of America; edited by Columbia University, 1919), pag. 347, etc.: "From the Chinese point of view the establishment of foreign guards and garrisons is not a shield but a spear, and until it is removed permanent good relations are not to be expected. The reason for stationing the troops and guards, which was to prevent the recurrence of the "Boxer" troubles, does not exist any longer. The Chinese people believe in what is right and reasonable, and so strong is this belief of theirs that they spurn the thought that it is necessary to back up or enforce their right by might. They use force only when they are irritated and humiliated to the utmost. So long as the Powers keep their oft-repeated promise to maintain the independence and integrity of China, and refrain from committing on Chinese soil such outrages as those preceding the Boxer Rebellion, they can fully rely on the non-recrudescence of anti-foreign outbreaks and the faithfulness of the Chinese to perform their international obligations as they have demonstrated in the past. Moreover China has shown her ability to give adequate protection to the legations during the European War, when the number of foreign troops was largely reduced."

Vid. also Ching-Lin Hsia "Studies in Chinese Diplomatic History" (1925), page 175. "The presence of the legation guards... also does violence to the Chinese people's sense of pride, in that they are a standing derogation of China's sovereignty. In the same light must be viewed the existence of the special quarters occupied by the foreign legations... Such an area finds no parallel in any other capital of the world." Speaking of 1900—1901 the author says: "It was a time in which all business in North China was dislocated and government disorganized; and it was in this dark

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in the future their extremely risky position and be truly a historical anachronism in the beginning of the second quarter of the twentieth century.*

With the liquidation of the permanent guard the free space called the glacis serving the purposes of military protection, will also have to disappear. As a matter of course, the entire military aspect of the question will have to go, and simultaneously, of itself, the glacis.

And then according to the idea (again not the idea of the writer of these lines, but the idea) of all, or

hour that China accepted a foreign fortress and garrison in her capital, as the only means by which, in the opinion of the world envoys accredited to her court could remain in safety... Granting that it was defensible as a temporary measure partly to safeguard the legations at Peking.., and partly to relieve the great responsibility of the Chinese government, we must maintain that since the signing of the Protocol that justification has long disappeared..." (pages 178—179).

* We call the reader's attention to W. W. ROCKHILL'S standpoint concerning this very question of a permanent guard in the Diplomatic Quarter at Peking. In his above-mentioned letter to MR. HAY, Secretary of State, the late Commissioner of *the United States of America* went on as follows: "The plan of defence submitted is, furthermore, entirely dependent on an assured permanent garrison in Peking of 2,000 men; but the Russian and British ministers and I stated that our Government had not agreed to maintain this number permanently and, I added, the United States would not agree to enter into any scheme of permanent occupation; could not, in fact, without legislative action. I said that so far as we were concerned, we reserved absolute liberty of action, not only as to the number of the guard we might keep here, but even to keeping any guard here at all."

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almost all of the governments concerned,— as witness the French Minister,*—the glacis should be returned immediately to the Chinese nation without any compensation—in the same way as it was received from China.

It is also evident that the prohibition of Chinese residing in the Diplomatic Quarter should be cancelled as well. In the first place it reminds us too much of certain former hateful restrictions which cannot be tolerated in our age. In the second place, such a prohibition was never observed, as a matter of fact, as we have ourselves seen in one of the preceding Chapters of this study.** Consequently, reality itself and contemporary conditions resolutely call for a cancellation of this prohibition, which should be done formally, openly and honestly.

However, naturally such a cancellation would render it quite impossible to assert that the Diplomatic Quarter is "specially reserved for the use of the Diplomatic Legations." All the more, let us remark by the way, this is to be emphasized as at the present time there are already many such persons living and business established in the Diplomatic Quarter that are in no way connected with the "use of Legations," or

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* *Supra* page 126.

** Vid. above our Chapter IV.

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that, at the very best, have only a very remote relationship thereto. This is an open secret.*

In conclusion, in connection with everything we have just pointed out, any *raison d'être* will disappear for an "exceptional" or even only "independent" administration of this comparatively small part of the city.** Its administration will merge with the administration of the rest of the capital, and there is no need to fear that the Chinese authorities will not desire or understand the necessity of manifesting sufficient care and labour to keep up the same welfare and good

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* We refer principally to commercial enterprises and institutions, which have increased considerably in number during the past few years. And this increase has occurred in spite of the fact that by making the agreement regarding the Diplomatic Quarter China naturally never intended to open another new centre for foreign trade. This is understood by everybody. Already in 1910 (meeting of May 21), the Dean of the Diplomatic Body (the Austrian Minister KUCZYNSKY) observed that: "Diplomatic Quarter is becoming more a trading quarter where merchants of all nationalities are opening their enterprises. Such a state of affairs cannot be reconciled with the nature and purpose of the Diplomatic Quarter. Sooner or later, attention will have to be paid to this matter." Vid. also the above-cited (Chapter VI) statement of SIR JOHN JORDAN at the meeting of November 14, 1918.

** " . . . approximately 1200 metres from east to west, and 650 metres from north to south, with an area of about 200 acres. . .": Morse, op. cit., III, page 355. Comp. "Peking. A Social Survey" by S. D Gamble and J. S. Burgess (1921), page 58: "From north to south, the Quarter is approximately half a mile wide, its total area being 0, 41 square miles."

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order within the Legation Quarter by which it is distinguished at the present time.*

Then will be no more a "Diplomatic Quarter," with its haughty aspect of an alien, unsociable, shunning and privileged entity. Thus will the "Diplomatic Quarter" in Peking recede into the historic past from which there is no return, into the history of politics and the history of law. And no "Tears of forgiveness" will be shed upon its grave.

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* It does not enter into the scope of our present study, and therefore, we do not mention that China has promised compensations and privileges "in case of and after the complete withdrawal of the foreign troops" from the province of Chihli and the Diplomatic Quarter. Vid. the Treaty of Shanghai, signed between China and Japan on October 8, 1903, art. X, and Annexes 6 & 7 (Hertslet, op. cit., vol. I, pag. 387 & 390, etc.; Mac Murray, op. cit., I, pag. 414 & 420, etc.).

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Errata.

Page 8, foot-note, line 31 *for* (1924) *read* (1925)

Page 11, line 5 *for* The *read* (The

Page 22, line 5 *for* resumé *read* résumé

Page 37, line 24 *for* consequently in, *read* consequently, in

Page 48, line 2 *for* sector *read* section

Addenda.

Page 9, foot-note, line 12, after "etc.": Revised and enlarged edition in two volumes, 1927, vol. I, pag. 506, etc.;

Page 90, foot-note, line 2, after "page 18": (Revised and enlarged edition, vol. II, page 557):

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